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January 19, 2009

The Honorable Barbara J. Rothstein
Federal Judicial Center
1 Columbus Circle, N.E.
Washington, D.C. 20002-8003

via Electronic Mail to brothstein@fjc.gov

Dear Judge Rothstein:

Thank you for your kind words and your informative letter of January 12, 2009. I am pleased to inform you that we have placed a series of web pages, as well as copies of 320 documents, numerous videos, and other materials from the Federal Judicial Center at this location on the Internet:

<http://public.resource.org/fjc.gov/>

We had less than \$1,000 to spend with NTIS on videotapes, so we were only able to purchase a half-dozen of your programs, but were able to supplement this with material from your web site and from the Judicial Conference and C-SPAN.

In your response to my previous letter, you touched on two matters on which I hope you will permit me to seek further clarification from you. The first is your tax returns, the second is the distribution of video.

You indicated that per [28 U.S.C. § 629](#) there is no specific requirement for the Federal Judicial Center Foundation to file returns and further cite the I.R.S. Code at [26 C.F.R. § 6033-2\(g\)\(1\)\(vi\)](#) as exempting the Foundation from this requirement because the Foundation was created by an Act of Congress. Your interpretation of the filing requirement is no doubt correct, however almost every other organization created by Acts of Congress does indeed submit their tax returns:

- National Foundation for the Centers for Disease Control and Prevention (58-2106707, [42 U.S.C. 280e-11](#))
- Foundation for the National Institutes of Health (52-1986675, [42 U.S.C. 290b](#))
- National Tree Trust (52-1707240, [16 U.S.C. 2101](#))
- National Environmental Education and Training Foundation (54-1557043, [20 U.S.C. 5509](#))
- National Fish and Wildlife Foundation (52-1384139, [16 U.S.C. 3701](#))
- National Forest Foundation (52-1786332, [16 U.S.C. 583j](#))

- Close Up Foundation (23-7122882, 20 U.S.C. 6494)
- Henry M. Jackson Foundation for the Advancement of Military Medicine (52-1317896, 10 U.S.C. 178)
- National Fund for Excellence in American Indian Education (20-1590158, 25 U.S.C. 458bbb)
- National Park Foundation (52-1086761, 16 U.S.C. 19e)
- National Fallen Firefighters Foundation (52-1832634, 36 U.S.C. 151301)
- National Film Preservation Foundation (52-2055624, 36 U.S.C. 151701)
- Points of Light Foundation (65-0206641, 42 U.S.C. 12661)
- Congressional Medal of Honor Society (52-6056376, 36 U.S.C. 40501)
- Congressional Award Foundation (52-1168592, 2 U.S.C. 801)
- House of Representatives Child Care Center (52-1485188, 2 U.S.C. 2062)
- Smithsonian Institution (53-0206027, 20 U.S.C. 41)

Tax returns from nonprofit foundations are part of our bargain with the American people. By allowing foundations the public privilege of accepting tax-deductible contributions, we agree to file information for public inspection that allows citizens to see that the funds have been properly used. I am unclear why the Federal Judicial Center Foundation would choose to exempt itself from the same best current practices we see in other trust instrumentalities of the United States and at 1.5 million other nonprofits around the country.

The second issue that was raised is the distribution of video from the Federal Judicial Center, video that has been prepared at a cost of millions of dollars to the U.S. taxpayer. Your answer indicated that you felt that the current two ways the Federal Judicial Center distributes video is sufficient. Specifically:

- Video for the public is provided by furnishing media to NTIS. The NTIS catalog is years out of date and charges \$70 for a VHS videotape. You indicated “we have no involvement in how NTIS decides which of our programs to put in their catalog, and which they do not, and we have no influence at all on their pricing structure.”
- Video for use by the Judiciary only is distributed on your own closed satellite system. You indicated that access to this system for the purpose of downloading works of government was not possible because “some producers and some speakers agree to provide us their programs or their services (including copyrighted materials) on the basis that they will be for the internal use of the courts only.”

It is hard to understand the position that public access obligations have somehow been satisfied by delegating the task to NTIS and that any failures are somehow their problem not yours. We have completed a very successful 1-year joint venture with NTIS, so I am very familiar with the agency, and they are very clear that pricing and inventory are matters set by their client agencies.

However, if NTIS is not doing the job for the Federal Judicial Center, that does not change the fact that these materials are produced with millions of dollars of taxpayer funds and that the materials could be made much more broadly available at no cost to the Federal Judicial Center. It seems extravagant to allow such material to lay fallow.

I have spoken to many government attorneys, congressional staff, law professors, law students, and practicing lawyers who all indicate they do not have access to your material and that they would find such access to be extremely useful. Indeed, the web page we created with videos purchased from the Federal Judicial Center has received rave reviews from the legal community and we have received many notes inquiring why more such materials are not available.

The service we provided for NTIS for one year is a program we call FedFlix. NTIS sent us copies of media they had available and lying around, which we replicated and returned promptly. As a result of the FedFlix program, over 588 valuable videos from the executive branch have been viewed by millions on the Internet Archive, YouTube, and other venues, at no cost to the government. You may learn more about this program at the following address:

<http://public.resource.org/ntis.gov/>

Needless to say, if you want to loan us any DVDs you have, or allow us to join the satellite system for the purpose solely of downloading works of government, we would be happy to provide the same service for the judiciary as we provided for the executive branch. Alternatively, I would be happy to discuss this matter with your technical staff if you would prefer to make these materials directly available to the public through the Federal Judicial Center or any of your partners.

The Federal Judicial Center is such a valuable resource, providing service not only to the Federal Judiciary, but producing unique materials invaluable to the legal profession as a whole and to the American people. These materials the Center produces are too valuable not to make them more widely available. I hope you will agree.

Sincerely yours,

Carl Malamud
President & CEO
Public.Resource.Org