

The 2016 Sunshine Luncheon: February 23, 2016



The Sunshine Luncheon honors past & present winners of the Pete Weitzel/Friend of the First Amendment Award recognizing an outstanding individual who has made a significant contribution to fostering of open government in Florida. This year's recipients are **Barbara Jeffords Lemley**, a Lake City resident, and **Stew Lilker**, publisher of the [Columbia County Observer](#). "The determination and dedication of people like Barbara and Stew to hold a government agency accountable for its actions are at the core of our public records law, and we need more people like them to help us do what we do. To recognize them and their hard work with this award will hopefully encourage others to do the same," said First Amendment Foundation President Barbara Petersen.



The Pete Weitzel/Friend of the First Amendment Award was created in 1995 to recognize the significant contribution made by Pete Weitzel, former managing editor of *The Miami Herald*, and founder and past president of the First Amendment Foundation, in the area of open government. The Award is given annually to someone in Florida who has made a significant contribution to the cause of furthering open government. Past recipients of the award can be found on the Foundation's website, [Friends of the First Amendment](#).

Tim Franklin, President of [The Poynter Institute](#), was our keynote speaker at the First Amendment Foundation's annual Sunshine Luncheon. Franklin joined Poynter in February 2014, after serving as managing editor of Bloomberg News in Washington. Previously, he was the editor of three metropolitan newspapers, and was the founding director of the National Sports Journalism Center at Indiana University. Read Tim's keynote speech here:



SUNSHINE LUNCHEON KEYNOTE SPEECH by TIM FRANKLIN, PRESIDENT, POYNTER INSTITUTE

I still have the tread marks on my back from my introduction to public records in Florida!

It was 15 years ago this week. I had just arrived as the new editor of the Orlando Sentinel.

And, I suddenly found myself in the middle of the biggest public records firestorm in the nation.

My newspaper had been working for months on an investigative project about NASCAR racing safety, following a string of three driver deaths in nine months. Our reporters had interviewed medical experts, scientists and engineers -- and reviewed records -- to determine if there was a common link in the tragic accidents that took the lives of Adam Petty, Kenny Irwin and Tony Roper.

The week leading up to the Daytona 500 in 2001, we published a series of stories which concluded that all three drivers had, in fact, died from the exact same injury -- basilar skull fractures caused by the head whipping violently. And, the stories documented how every other major racing league already had mandated the use of helmet restraints that prevented that precise injury.

A couple of days after that series of stories -- on the last turn of the last lap of that year's Daytona 500 -- racing icon Dale Earnhardt crashed into the wall and died instantly. Our immediate questions were these: Did the legendary driver die from the exact same injury as the others, and could his death have been prevented.

We immediately filed a public records request so that one of the nation's leading head trauma experts could review the autopsy records and photos, and write a medical opinion. Autopsy records were clearly public, and we felt a sense of urgency because drivers were dying at an alarming rate.

We thought this was going to be a non-controversial records request. Our attorney explained to Teresa Earnhardt's lawyer what we were doing and why. We had a verbal agreement with her attorney to have a medical expert review the records and get to the bottom of how her husband died. We agreed *not* to publish any autopsy photos. That was never our intent.

Imagine my surprise when, without warning, Teresa Earnhardt then went on national TV to denounce the Sentinel and called on NASCAR Nation to rise up in protest.

And that they did! I suddenly had the fury of Earnhardt fans barreling down at me at 200 mph. I got 15,000 emails in 24 hours – several of them specific death threats directed at my family and me.

Now, a few of the messages came from people who clearly must have been advocates of open government and public records. Or, I assumed they must have been, right? After all, they said they wanted to kill me so the public could see my autopsy pictures! That was very civic minded of them, don't you think?

Not surprisingly, the Florida legislature stepped on the gas on this controversy, and that was my first introduction to Barbara Petersen and the First Amendment Foundation.

Despite the foundation's best efforts for a common sense compromise, the legislature shifted into high gear and raced to pass a bill in just 21 days to block access to autopsy records without judicial approval. Such records had been public in Florida for decades.

Eventually, the Sentinel was able to reach an agreement with Teresa Earnhardt to have one of the nation's leading experts on head and neck injury biomechanics, Dr. Barry Myers of Duke University, examine the records and photos to write a medical opinion.

Two months later, Dr. Myers concluded that Earnhardt did, indeed, die from the exact same injury as the other three drivers. He also said that head restraints could have potentially saved Mr. Earnhardt's life. Dr. Myers rejected NASCAR's theory that Mr. Earnhardt died from a broken seat belt.

What was the result? A few months later, NASCAR adopted the most sweeping safety reforms in its history, including mandating the use of helmet restraints. Thankfully, not a single NASCAR series driver has died in the 15 years since then.

Those advances in auto racing safety, which have undoubtedly saved lives, were made possible only because of access to taxpayer-paid public records.

So, let's fast forward to later in 2001.

We all witnessed the horrific tragedy of 9/11, a terrorist attack that fueled widespread fear and anxiety across our nation.

Understandably, many Florida legislators moved quickly to try to restrict access to any public record that could be used by terrorists. That well-intentioned sentiment, however, led to a tsunami of proposed Sunshine Law exemptions, a total of about 150. To put it bluntly: It was open season on open government in Florida.

The proposals ranged from the serious to the silly. Take, for example, the bill that would have shut off public access to the flight plans of crop duster planes. Sound reasonable? There's just one problem. Crop duster pilots don't file flight plans! Oops!

Thanks to the heroic efforts of the First Amendment Foundation, only a handful of well-reasoned bills actually passed. Florida's best-in-the-nation Sunshine Laws survived relatively intact – at least at the time.

We thought 2001 was the Perfect Storm when it came to assaults on Freedom of Information laws in Florida and around the country.

So, in response, those of us who believe strongly in the notion of open and transparent government realized that we needed to immediately raise the public's awareness – and lawmakers' consciousness – about the importance of public records.

That notion gave rise to the creation of the first Sunshine Sunday public awareness campaign in Florida. What started in Florida in 2002 has now mushroomed into a national Sunshine Week public awareness campaign. The 11th annual national Sunshine Week begins March 13th.

Despite admirable and diligent efforts like Sunshine Week, however, the notion of open government in our self-governed democracy is still too often an illusion.

And, there's a tragic irony at play. At the very moment in our history when citizens should be able to easily access government information in this Digital Age, access to information is actually getting worse.

A decade ago, I gave a speech at a national conference of news executives, and I heralded the coming digitization of government information and the new era of citizen engagement it would spawn by giving taxpayers instant access to records that they paid for. Boy, was I wrong!

Instead, the Digital Revolution has had the opposite effect. Privacy concerns are trumping openness. Potential ease of citizen access has prompted many public officials at every level of government to erect firewalls to information. They often dismiss complaints as coming from whiny journalists. Never mind the fact that the vast, vast majority of public records requests come from businesses.

This is a not a Republican problem or a Democratic problem. It's not a Red State problem or a Blue State problem. It's an American problem, and citizens are losing.

Republican U.S. Sen. Charles Grassley of Iowa – not exactly a revolutionary left winger – recently wrote this:

“Government officials are caretakers of hard-earned tax dollars . . . Transparency helps pull back the bureaucratic curtain and educate the citizenry. Civic engagement is key to self-government. The more people know what is going on in government, the better our free and open society.”

On this point, Sen. Grassley and I are in vehement agreement. At this annual Sunshine Luncheon, I say let us rededicate to letting the sun shine from Tallahassee to Washington, from the East Coast to the West Coast!

It can't be a government *of* the people, if the people *in* government can keep information *from* the people.

Take President Barack Obama. On his first full day in office, he vowed to “usher in a new era of open government” and “act promptly” to make information public.

Not happening.

A couple of years ago when I was managing editor in the Bloomberg News Washington bureau, we filed a simple request for the travel records of the top officials in 57 federal agencies and departments.

What happened? Only one of the 20 cabinet-level agencies complied with disclosure laws. Just one. Only 8 of the 57 federal agencies, or 14 percent of them, complied with the law.

According to The Associated Press, the Obama administration broke its own record in 2014 for denying and censoring requests under the now 50-year-old Freedom of Information Act.

The situation is so bad that a coalition of media organizations, including The Poynter Institute, joined forces to send letters of protest to the White House, and recently met with Press Secretary Josh Earnest.

It pains me to say that the situation in Florida – once a model for the nation in government transparency – is now no better. The Sunshine Law has been darkened by exemptions cloaking information from the public.

Don’t take my word for it. The data tells the story.

In its first two decades of existence, Florida lawmakers created about 250 exemptions to the Sunshine Law. Nearly three decades later, there are now 1,106 exemptions – and 74 more were introduced this session.

If you think I’m exaggerating the problem in Florida, consider the conclusion of a highly respected, nonprofit, nonpartisan organization.

A few months ago, the Center for Public Integrity gave Florida a grade of D-minus in its assessment of state government accountability and transparency. And, it ranked the State of Florida – once the undisputed leader in government openness – 30th in the nation -- in the bottom half of states.

The center said the problem in Florida these days is not so much with the open records laws – although there are issues there -- but with how the state deals with non-compliance with those laws. Because state agencies face few consequences when they withhold documents, the center said, it’s no wonder that they’re doing so.

Like a parent worried about his child’s report card, I sincerely hope we can work together to bring up Florida’s grade. The Sunshine State’s reputation for Government in the Sunshine has stood as a beacon for the nation. Let’s be an “A” state again, what do you say?

I'm encouraged by the events of last week. That's when the Senate Fiscal Policy Committee agreed to an important compromise on a bill that would have removed a requirement on awarding legal fees to citizens when state or local government violates public records laws.

*My friend **Barbara Petersen of the First Amendment Foundation is now working furiously on some of the other exemptions so that citizen access to information in Florida is preserved for years to come.***

Speaking of Barbara, the First Amendment Foundation and The Poynter Institute just announced a few weeks ago a landmark partnership agreement that will strengthen both organizations.

It will allow the foundation to operate more efficiently, and at the same time focus on its vital mission of enhancing citizen access to government in Florida.

It's also a partnership that will result in one foundation staffer being located on our campus in St. Pete. This will give the foundation exposure to the tens of thousands of journalists who come to Poynter each year from around the world for our training programs and conferences.

Just last year, Poynter trained more than 107,000 journalists and journalism students from 126 countries – from Afghanistan to Zimbabwe – and from 44 states and the District of Columbia. Poynter also has the world's largest media e-learning platform, News University, with 370,000 registered users in 200 countries and territories.

Importantly, this partnership also combines the two organizations' greatest strengths in an important way. FAF is a leading expert on open government. Poynter is one of the world's premier training institutes.

So, our organizations have now joined forces on a new Sunshine Certificate -- a self-directed, online training program for Florida government officials, lawyers and journalists to help them understand and apply the state's public records' laws.

This is the best, the most affordable and the most comprehensive training program in the state on open government and ethics. As you know, the Florida legislature passed a law that requires ethics, public records and open meeting training annually for all constitutional officers, such as the governor, state attorneys, sheriffs and elections supervisors, and elected city officials.

We're excited to be offering this training in conjunction with the First Amendment Foundation. It will be available on Poynter's News University e-learning platform. It's also been approved for Continuing Legal Education credits.

In addition, we'll be working with the First Amendment Foundation on in-person seminars and convenings around the state.

This partnership fits perfectly with our two organizations' ultimate missions – to help give people the information they need to be informed, engaged citizens in our democracy.

Providing citizens' access to information is no small matter.

This is information that can be used to help keep our kids and the most vulnerable in our society more secure. It's information that can help prevent consumers from being scammed. It's information that can help keep our roads and streets safer. It's information that helps to hold our public officials in this self-governed democracy accountable.

This information belongs to you and to me. We paid for it with our tax dollars. Let's demand that we continue to be able to use even more of it!

Consider briefly how access to public records benefitted our communities and our state just last year.

It helped to illuminate a shameful situation for minority students in Pinellas County.

Three Tampa Bay Times reporters spent a year analyzing Florida school test scores and district records. They found that thousands of African-American students in Pinellas County are trapped in five schools that are veritable Failure Factories. In their series last August, they chronicled how 95 percent of black students at the schools are failing reading or math – 95 percent! -- making southern Pinellas the most concentrated site of academic failure in all of Florida.

The Times and the Sarasota Herald-Tribune used police and hospital reports to discover that violent attacks in the state's six largest mental health hospitals have doubled since 2009. Nearly 1,000 patients injured themselves or someone else, and 15 people died.

The Tallahassee Democrat recently used Florida Department of Management Services records to uncover that a New Jersey contractor is pocketing more than half the money collected from the annual state-employee charity drive. In other words, more than half the money Florida workers thought was going to charity actually went instead to a for-profit company.

And, the Florida Times-Union used email records to uncover how the board of the city-owned utility in Jacksonville gave a \$32,773 pay raise and a glowing annual review to the utility's executive director. The board did that after reading from a script at a public meeting that was written by – wait for it! – the utility's executive director. The mayor quickly asked for the resignations of all the board members and replaced them.

There are many, many other important examples of the use of public records – and not *just* by news organizations.

In conclusion, I'd say this: Let us seize the moment of this historic digital revolution. Let us use technology to create new pathways for citizens to interact with their government. Let's not miss this opportunity to better our democracy for my kids and your kids and generations of kids to come.

After all, doing right by our citizens is doing the right thing.