



Georgia First Amendment Foundation

The Georgia First Amendment Foundation advances the cause of open government and freedom of information through education and advocacy.

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WINTER 2005 NEWSLETTER
 GEORGIA FOI ACCESS
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Feltus to receive Open Government Hero award at Weltner Freedom of Information Banquet Jan. 28

'Courage flows from strong values and principles'; What Thurbert Baker said is what's in 'that little red book'

By Tom Bennett

Atlanta, Dec. 16, 2005 – Charles "Mickey" Feltus of Chamblee is a retired federal government employee who lives three quarters of a mile from Peachtree-DeKalb Airport, "between the runways." He piloted the biggest victory of 2005 strengthening the Georgia Open Records Act. Thanks to him and his tenacious attorneys Brandon Hornsby and Susan Gouinlock, agencies no longer can agree with the federal government to contrive Georgia ORA exemptions. In behalf of many others, Feltus stood up to PDK, DeKalb County government, the Federal Aviation Administration, the City of Atlanta and U.S. interests that sell airplanes, airplane fuel, runway concrete, and airline tickets. So this former Peace Corps volunteer was asked: Didn't it take courage for you to sue such influential and powerful entities?

"First, it's not a personal thing for me," Feltus said. "I'm just representing the community that has stuck by the Georgia Open Records Act for years, and supported a legal fund that we created to make it work. And I'll just respectfully disagree with you in what you said. If someone has strong values and strong principles, then courage flows from that."

For his and his co-advocates' years of "sticking by" the Act, Feltus is the Georgia First Amendment Foundation's unanimous choice to receive the 2006 Open Government Hero Award. It will be presented to him Jan. 28 at a banquet at the JW Marriott Buckhead hotel. Sen. Johnny Isakson also will receive that night the Weltner Freedom of Information Award.

The lawsuit bearing an obscure citizen's name now is in the torn, battle-scarred log book of Georgia FOI victories. It is civil action 04CV5630-1, Charles "Mickey" Feltus v. DeKalb County, Vernon Jones in his official capacity as Chief Executive Officer of DeKalb County, Peachtree-DeKalb Airport, and Carl L. Rimmel, in his official capacity as Director of the Peachtree-DeKalb Airport.

This is far from over. Feltus and his fellow opponents of airport expansion and secrecy are represented by Brandon Hornsby Esq. of DeKalb County. Hornsby wrote briefs that sliced up, like filleting fish, FAA claims of secrecy of records about testing bigger airplanes at PDK, and DeKalb's of it being too hard to produce these records to the citizens.

Watch syrup flow out of a bottle that has been in the refrigerator. That often is the pace of sunshine law in a Southern state. A dogged single practitioner and expert on

open records, Hornsby still is wrangling to get all of 58 records he and the citizens were promised. In addition, the issue of attorneys' fees still is unsettled four months after DeKalb Superior Court declared the citizens clear winners. In addition, there is a hardened, almost unprecedented record of agency obstinacy. The citizens filed 100 Open Records Act requests to the stonewalling county before raising the money to hire their lawyer and go to court.

THESE LONGTIME SCRAPPERS for greater sunshine law in DeKalb County have put into the books some historic advances in sunshine law.

From Decatur to White counties, from row-crop Georgia to the mountains, there are judicial benches where important rulings for sunshine have been made. Joining them is that of Judge Robert J. Castellani of DeKalb Superior Court. He ruled Aug. 8 in *Feltus v. DeKalb County et al.*

"The memorandum of understanding (entered into by the Federal Aviation Administration, the City of Atlanta and DeKalb County in December 2002) should not be used to subvert the letter and spirit of the Georgia ORA in contravention of the state's stated policy of openness in government," Judge Castellani wrote.

"It is not disputed certain records were eventually produced by the defendants; however, other responsive records have not been produced to date, including memoranda purportedly protected by client-privilege which privilege the court has determined was waived by the defendants...

"The court finds the plaintiff has carried his burden of making a prima facie showing that he is entitled to judgment as a matter of law."

SIX MONTHS EARLIER in February, events began taking shape as they often do when sunshine law is about to win a battle. A Georgia legislator stood up for it, and Attorney General Thurbert Baker got involved.

State Sen. David Adelman of DeKalb appears on the way to becoming the Roy Barnes of the first decade of the 21st Century. Adelman asked for, and Baker issued, Unofficial Opinion U-2005-1. Drafted by Deputy Attorney General Stefan Ritter, this historic addition to the law will frustrate future schemes to work with some federal agency and make an end-run around disclosure.

"Agencies covered by the Open Records Act cannot contract with a federal agency to create an exemption to the Act and make otherwise public documents in the hands of the agency confidential unless the contract provision is mandated by federal law or regulation," Baker wrote.

"Because the contract is not before me to review, I will not comment on its legality or on the applicability of the Act to specific documents about which I lack information. I observe as a general matter, however, that the Act's exemption from disclosure of public records 'specifically required by the federal government to be kept confidential' only applies to records required to be kept confidential by federal statute or regulation."

The steps taken by Sen. Adelman and AG Baker were "a very, very important thing," said Charles "Mickey" Feltus. "I'd written many letters to Baker, but after Sen. Adelman said 'Let's look into it,' that did it. You've seen that little red book they put out? Well, what Baker said is what's in there."

FELTUS ALSO WAS the plaintiff in DeKalb citizens' failed 1987 attempt, going all the way to the 11th Circuit Court, to block expansion of PDK runways from 5,000 to 6,000 feet. Yet in that ruling there was a nugget of hope. The court set 66,000 pounds as the maximum takeoff weight for planes at PDK. DeKalb and the FAA have been ignoring that limit, in Feltus' opinion.

"The Gulfstream Two was about the biggest they could use (as a result of the court

ruling)," Feltus said. "But now they have Gulfstream Five's and DC-3s and DC-9s... I honestly believe PDK has been designated to be Hartsfield-Jackson North, to serve the same purpose in Atlanta that Midway Airport does in Chicago. It's poor planning to build these airports in the middle of congested lives."

The Fair Hope, Ala., native served in the Army, graduated from Auburn University, and served in the Peace Corps in Ethiopia for two years. Then at the height of the Civil Rights revolution, he went to work for the federal entity Economic Opportunity Atlanta, based in the 101 Marietta Street building in Atlanta. During the Carter administration, he joined the U.S. Energy Department's regional office in Atlanta. He was involved in planning Atlanta's environmental future with the Atlanta Regional Commission. Feltus was DeKalb Commissioner Jackie Scott's appointee to the PDK Citizen Advisory Committee for years during the 1990's, and during that time served as chairman. He retired in 1999 and worked for a time for the Atlanta Empowerment Zone "until they closed it." He is 68 and has a wife and three children.

"I don't pretend to have a background in aviation, but I do have a background in what good planning is," Feltus said. "My objection to PDK from day one has been that it's just the wrong place to build an airport."

His full name is Charles Lambert Moore Feltus 7th. One day when many Charles Feltuses were in a room together, and one of them needed to be singled out and scolded for talking too loudly, a grandfather who was at that moment reading a Mickey Mouse comic book, turned and said: "You, yes, you! From now on your name is 'Mickey.'"

Feltus 7th says of the Georgia First Amendment Foundation, "The role it plays is just so crucial. If it wasn't for people like you who really stick with it, there is no telling where this country might be."

Sen. Johnny Isakson and Charles "Mickey" Feltus will be the guests of honor at the fifth Charles L. Weltner Freedom of Information Banquet, hosted by the Georgia First Amendment Foundation. The banquet is set for Saturday, Jan. 28, 2006 at the JW Marriott Buckhead hotel, 5300 Lenox Road in Atlanta and adjoining Lenox Square. The hotel telephone number 404-262-3344. Business attire is appropriate. A reception with a cash bar begins at 6:30 p.m. with dinner promptly at 7:30 p.m. To contact GFAF for sponsorships and tickets, contact info@gfaf.org or phone 404-525-3646.

Throughout that day at the same Buckhead hotel, issues of press and speech freedoms will be among the lively topics of the Georgia Bar, Media and Judiciary Conference. This is an annual get-together among lawyers, reporters and judges seeking an informal means to let off steam, find common ground on press and broadcast issues. For more information about the conference, now nearing its second decade, contact the Georgia Institute of Continuing Legal Education in Athens at icle@iclega.org or telephone (706) 369-5664,

The little red book, 'Georgia's Sunshine Laws, A Citizen's Guide to Open Government,' by GFAF and the Office of the Attorney General of Georgia, is available by writing to GFAF, 150 East Ponce De Leon Avenue, Suite 350, Decatur, GA 30030.

Tom Bennett of the Journal-Constitution is a volunteer for GFAF.

PREVIOUS RECIPIENTS OF GFAF'S OPEN GOVERNMENT HERO AWARD

2004 Tom Bennett, Atlanta Journal-Constitution
2005 Joel Elliott, the weekly Toccoa, Ga., Record

