

**Audio Transcript**  
Episode 188 of "[E&P Reports](#)" Vodcast Series  
*with Mike Blinder*

The banner features the E&P Reports Vodcast logo on the left, which includes a Wi-Fi symbol and the text 'E&P REPORTS VODCAST'. To the right of the logo is the URL 'EditorandPublisher.com/Vodcasts'. The central part of the banner shows two video thumbnails: Mickey Osterreicher on the left and Mike Blinder on the right. Below the thumbnails are their names and titles: Mickey Osterreicher, General Counsel, National Press Photographers Association (NPPA); and Mike Blinder, Publisher, E&P Magazine. The E&P logo is also present in the top right of the banner. In the bottom right corner, it says 'Episode Sponsor' followed by the BLOX DIGITAL logo.

**[The NPPA’s Mickey Osterreicher. Helping both the police and journalists understand the 1st Amendment](#)**

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In this episode of “E&P Reports,” we go one-on-one with National Press Photographers Association (NPPA)’s general counsel, Mickey Osterreicher, to gain some advice on how both the news industry and the nation's law enforcement can work better together to respect the 1<sup>st</sup> Amendment, while each goes about their tough jobs during times of crime and crises. We also chat with him about his perspectives on helping define who a journalist is, especially now, as so many citizens are recording news on their personal devices

0:00:03.8 Announcer: This is E&P reports, a Vodcast, from Editor and Publisher magazine, the authoritative voice of news media since 1884, serving newspapers, broadcast, digital, and all forms of news publishing.

0:00:20.1 Mike Blinder: And greetings once again. Mike Blinder, publisher of E&P Magazine. As always, we urge our audience, if you're listening on a podcast platform, to follow us, watching on YouTube, hit the subscribe button below, smash the bell to the right. You'll get an update each and every time we upload a new episode of E&P reports. My guest today was featured in our May cover story, and I found it fascinating. Mickey Osterreicher, greetings and welcome to the program.

0:00:49.1 Mickey Osterreicher: Thanks for having me.

0:00:50.8 MB: You have an interesting background. I mean, if I may run, I mean I stalked you on the web. I had to, because I learned who you are General counsel to the National Press Photographers Association, the NPPA. And you are a principal, I guess, of your own law firm, Finnerty Osterreicher & Abdulla. Do I have that correct, sir?

0:01:09.9 MO: Got that right too.

0:01:11.3 MB: My god, I'm doing good with names this morning. But you've been an award-winning photojournalist for over 40 years. But you've had your... I mean, if you anyone, Googles Mickey, you'll see he's got a lot of stuff, especially in many photos, you'll see photos. But your stuff's put on USA Today, Newsweek, New York Times. You started though in Buffalo as a photographer for the Buffalo Courier-Express. Is that true?

0:01:36.4 MO: Well, I actually started as a, the photo editor of the paper at the University of Buffalo, The Spectrum. But then, I had a special major in photojournalism and fortunately got a job even before I graduated with the Buffalo Courier-Express back in the early '70s.

0:01:53.2 MB: We're gonna be discussing, not photojournalist yeah, photojournalist, but mostly First Amendment and rights, because not only are you a photojournalist and you obviously advise and instruct our industry on First Amendment, especially when it comes to covering the police. Now, this is where it gets a little weird. You are also a police officer or at least worked with the police department. I mean, is this another side of your life, sir?

0:02:18.3 MO: Yeah. Another hat that I wear. I've been a Uniform Reserve Sheriff's deputy with Erie County Sheriff's Office since 1976. So I understand the challenges of law enforcement, but I also understand how important it is for journalists to be able to do their job.

0:02:35.0 MB: You are a lawyer, a cop, and an award-winning photojournalist. This is gonna be a great story and we're gonna unpack all of that on the backside of this message.

0:02:47.4 Announcer: This episode of E&P Reports is exclusively sponsored by Blocks Digital Formerly Town News. Even though the name has changed, their commitment to the media industry is as strong as ever. Blocks Digital is now even better positioned to deliver integrated solutions like content management, audience development, advertising revenue, video management, and more. Join the over 2000 news publishers worldwide that power their ongoing digital transformation with Block's digital serving over 141 million monthly users who view over 6.5 billion pages of content

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0:03:52.3 MB: Okay, Mickey, let's start first with this. There's a lot of changes that have happened in the... You and I are both, we're both, I don't know your age, sir, and I don't, you look much younger than me, but we we both know that Paul McCartney was in a band before Wings. Do I have our era right? I mean, I entered this industry in the '70s. Okay. And, as a radio guy, I had a team. I was running a radio station of news people. They walked around with huge tape players around their neck, managed a TV station in Maine in the '90s, I'd send out shooters with big cameras and reporters. It's hard to recognize a reporter today, right? With all, like, everybody's going out with their phones now, just like anybody else. Is that a challenge today? When a reporter is on a scene of being recognized as a reporter? I mean, what's going on in your opinion when it comes to recognizing the press, when it comes to tricky situations like this?

0:04:48.1 MO: There's just so many challenges. But the biggest one, the biggest one I get from all sides is who is a journalist? When there's an order to disperse and there's an exemption for journalists, who does that apply to? If there's a curfew, as we saw during the Pandemic and some of the social justice protests, and journalists almost always are identified as essential personnel by the governor when he or she signs that executive order, who is qualified under that to then stay out after the curfew. And it's a challenge for both journalists to figure out, and actually be able to assert those rights. And a bigger challenge for officers when a journalist is saying, wait a minute, wait a minute, I can stay. And they have no idea whether they can or they can't.

0:05:50.4 MB: Okay. We're gonna get down to the weeds in a little bit. 'Cause I want you to offer some sincere advice to the thousands of news publishers here, how to handle any situation. But let's stay at 30,000 feet and discuss that first thing you said. What the heck is a journalist? You understand that there's legislation trying to be passed right now to support local journalism in our society, which is going through some financial crises, right? I mean, big tech takes a lot of money off. We're not getting the advertising revenues we used to get. Classifieds are now no longer part of that funneling into journalism. So now we're trying to find a way to define what journalism is in order for compensation. But in our society, I mean, you've studied this, you're a First Amendment lawyer. How do you take a constitutional democracy like ours, in your opinion, or republic, I guess that offers a free and unfettered press where we can't license journalists, define them, have the government say you're a journalist, you're not. How do we define journalists? Can I stay there for a sec? What is in your mind, does it ever bug you? Do you ever think that through and try to come up with the other side of that equation?

0:06:58.7 MO: It's not a 64,000. It's a \$64 million question. And if anybody can answer that, they really deserve all that money. This has been going on for quite a while. It just, it is getting worse. For the most part, I think people know that every state, pretty much every state has a shield law, which provides a qualified privilege to those people who are defined under that. For them not to have to reveal their sources, not to have to give them their outtakes, their notes, things like that. But there's never been a Federal Shield law. And back during the Obama administration it was the first time, or it was the closest we ever came to getting a Federal Shield law. I was there in the Senate for the markup 'cause we'd been working on it very hard. And the biggest stumbling block once again was how do we find this class that will be entitled to that privilege?

0:08:00.5 MO: And nobody could come up with an acceptable definition. And just to broaden things to make the matters even worse. Back in the day when I was a journalist running around either as a still photographer with like three Nikons around my neck or in broadcast when I had a big Betacam on my shoulder, there was nobody else out on the street with cameras. It was real easy. There's a journalist, there's a journalist, there are a handful of us that had those, if you were from radio, you usually had some type of a recorder and a microphone. Now pretty much whether you are a photographer for a paper, and, so many papers, unfortunately have no photo staff anymore or you're being sent out as a reporter, but told to take pictures and shoot video, and you're sent out with your iPhone or some type of device in your phone, that also has the ability to take and record images.

0:09:04.1 MO: So you're out there, you're a young person, and you look just like all the other people who are out there protesting, but you want some additional rights that they may not have when they're ordered to disperse or they're told there's a curfew. And we'll add one more level of complication, just show you how thrilling this subject is. Many police officers rely on credentials, some form of identification. So people can make them up. But let's just stick with, you've got a form of identification, a valid form of identification, whether it's issued by your police department or your company. Because of the nature of things these days, it's not just for years, it was the police who didn't wanna be photographed or recorded. Now it's the protestors who are going after journalists and saying, you don't have my consent to take my photograph or to record me. And so journalists are putting those credentials away inside their shirts, making it much more difficult for the police to recognize them, since they now look like everybody else and don't necessarily have a big Betacam or the SLR or something that looks professional. And so you throw that in and we've got a perfect storm of how do we figure out who's who. And it makes everyone's job a whole lot harder.

0:10:36.7 MB: All right, so let's separate two forms of local journalism. Let's take the cities out of the mix for a second. I mean, 'cause we can talk George Floyd, we can talk Atlanta, where there's just tons and tons of journalism and freelancers. A lot of this audience, Mickey is small, local, hyper-local news organizations just trying to survive and serve their job as a voice for their local communities. And I'm sure you've read about the, I mean, of course you have news desks and all that. Some experts have come on this program and we've done stories that it's okay to become more empathetic towards the police. I mean, if you are now advising a person in a small town who's running a local operation, should you get to know the police force first, let them know who your journalists are and form some kind of an idea. So it makes it easier when the crises do occur? Or is that just stepping over boundaries? I mean, I'm just asking your opinion, sir.

0:11:31.7 MO: Not at all. And it's part of the training that I do, again, with both the journalists and law enforcement. And the training is the same. It's not like I train the journalists and tell them one thing and I train the police and I tell them in another, it's the exact same training. Maybe it's framed a little differently, but it's the exact same training. And my mantra is communication. I urge law enforcement to reach out to their local news media and get to know them. And I do the same for the news media for and independent journalists. Don't wait for a huge riot or protest to break out to try and figure out what the rules of engagement are going to be. It's a whole lot better when people recognize one another, understand their roles and responsibilities, understand that both groups have a lot more in common than they think.

0:12:34.1 MO: First of all, when there's something bad happening, first responders, law

enforcement are going towards it. So are the media, whereas everybody's normally going in the opposite direction. During COVID, neither law enforcement nor journalists really, especially visual journalists, could work from home. They had to be out there. They had to photograph, they had to record to do their job. And the third thing is that both professions are often highly criticized for the jobs that we do. So there's a lot of commonality there, and there needs to be this discussion. Don't expect to just show up and understand what's going on and have the police just go, oh yeah, sure, it's fine. You can be, you need to have conversations and they need to know you as people, especially as you said in a small community.

0:13:32.3 MO: It's much more difficult, let's say in New York City where there are tens of thousands of police officers and hundreds of thousands of, if not millions of people. So in a small community, much better, have conversations, whether it's monthly, quarterly, whatever it is, whether you come to them, they come to you or you meet on neutral ground and you talk about things and you talk about issues and you talk about what ifs. And then when, forget about protests, when there's an accident, when there's a homicide, when there's a matter of public concern and you show up on the scene, you understand and they say, oh, it's not the media is here. It's... Oh, John is here, or Mary is here. And it makes a huge difference. And again, when you're looking at them, it's not like, oh, the cops, it's, oh, it's lieutenant so-and-so, or Captain so-and-so, and you're having a conversation at a much different level.

0:14:37.6 MB: I want your opinion on our democracy. I always say, and I keep writing editorials, that some very imperfect men, way back when, 247 years ago, wrote a perfect document. They sat down and built a democracy based on the fact that that final check on power is a free and unfettered press. No government intervention, where other societies across our planet tend to be okay with some government and some definition of press. Could this backfire? In other words, let's assume now someone's just got a camera and they start figuring out that if I just wanna walk around and say, well, I wanna be a reporter to a cop, or I could be a reporter, I plan to file. Are we at a place now, in your humble opinion, sir, because you've got this, you're a major voice for a big part of our industry, which is now moving in a whole mess of different directions with AI, with photo journal... I mean, you almost just wanna retire, don't you? Because the next few decades are gonna be massive. Are we at a precipice now, where with social media and mobile cameras and all this and more that there should be some definition? Should there be some amendment? Should the, can we survive if there is a defined press? Or is where's your head on that, sir, if I may ask?

0:15:58.5 MO: Well, you're right. It's, you might have seen my reaction when you said AI and, that is going to be a huge problem. It's not going to be, it already is a huge problem. And we've been talking about that, quite a number of us already because, I'm seeing things that are put up there and it says clearly AI and it's explained, this is not a real image. And people, if they wanna buy into it, if it kind of reinforces what it is that they like, then they don't care that it says AI. They think, yeah, that really happened.

0:16:37.1 MB: That's news. Yeah.

0:16:37.2 MO: Yeah. And then for those that have been saying fake news for so many years now you can have a video, you can have a still that's very real and really did happen. And they can just say, AI, it's fake. There used to be two things, when I was growing up and certainly in journalism was don't believe everything you read and seeing is believing. Unfortunately, seeing is believing is not a truism anymore. And that is going to be very difficult, especially for visual journalists. And to

part of your first question, there are a number of people out there these days, they call themselves First Amendment auditors, and they do go around. It's not like they're actually covering an event. They will go and stand in front of police stations or wander into their parking lots carrying their cameras or go into their lobbies.

0:17:34.3 MO: And they're basically trying to see if they can get a bad reaction from officers, if they can bait them into acting foolishly for the camera. And then they get all these YouTube hits and, it becomes a game, which then makes it harder for journalists who are actually trying to cover matters of public concern because they all get lumped in with, there's a guy with a camera, they are pain's in the neck. We don't like anybody with cameras. We just wish they would all disappear. And so you're absolutely right that it's very difficult. I don't think it should be the government that defines who is or isn't a journalist. I think it's the last thing that anybody wants. We've seen lots...

0:18:27.8 MB: Or we could police ourselves.

0:18:30.3 MO: Well, I think we should. We've seen lots of law enforcement agencies who've gotten out of the business of issuing press credentials. They didn't wanna have to decide who qualifies for one, who doesn't qualify for one. And then as you mentioned, I think the real one, one of the real problems for journalism these days is the fact that there are so many news organizations that are being bought up by people who are not basically interested as much in journalism as they are in the bottom line. I think for years, everybody, of course, you have to remain viable to be a business. But they're, unfortunately, I feel like we're losing news organizations and the ability to cover matters of public concern more, more from the inside than from the outside. But that's just my opinion.

0:19:28.9 MB: But, and we'll leave it at that, but my opinion, someone somehow has to define truth in journalism, whether we do it ourselves and define what journalism is. And I think a lot of these other problems could slowly but surely start to come to pass. But we're at a precipice. Don't you agree? I mean, this is, we're at a moment of truth where it's being tested and...

0:19:54.9 MO: Absolutely. That's why I have a little sign on my desk that says, bang head here.

[laughter]

0:20:02.0 MB: You Know something. Thank you, sir. I'm always trying to find the perfect pull quote from every interview and you just gave it to me. So, [laughter] and well, that's a good one. So Mickey Osterreicher, the obviously general counsel of the National Press Photographer's Association, award-winning photojournalist, educator who educates both sides of the equation. Both the law enforcement as well as journalists. If someone wants more information about your services, what you do, how to get ahold of you, Mickey, do you have a website or some way that people can just find you?

0:20:39.1 MO: Sure. Well, we have a website, it's nppa.org. And my email is real easy. It's lawyer@nppa.org. And the other thing for people to know if they want some training for their police departments or for their journalists, we have a grant from the Knight Foundation, and I have been doing lots of training under that. It's not like NPPA has money, that we don't know what to do with, we're a small organization. We do a whole lot with very little. But we definitely are out there. And as I said, I've been doing training, I just did it with the Los Angeles Police and Sheriff's Department. I did it with the Minnesota State Patrol as a settlement of a federal civil rights lawsuit.

I trained all of the 600 plus troopers that they had over a period of a few months. So we are there and we are always willing and, hopefully we'll be able to help in some way.

0:21:47.1 MB: Mickey, keep up the good fight and stay in touch with us please.

0:21:50.5 MO: Thank you. And thank you again for having me. This has been lots of fun. And as we both realized we could sit here and do this for a few hours.

[laughter]

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