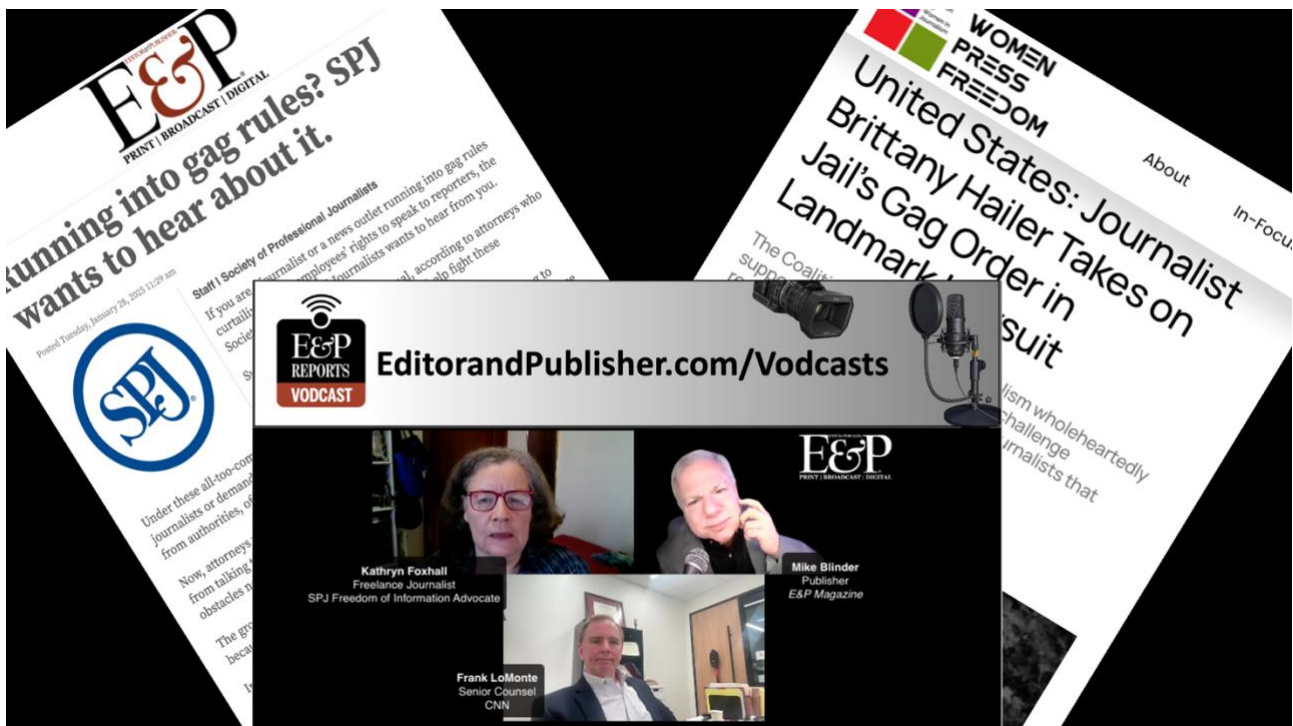


Audio Transcript

Episode 270 of "[E&P Reports](#)" Vodcast Series
with *Mike Blinder*

Publication date: Monday February 10, 2025



[Time to challenge gag rules: Journalists fight back against restrictions on public employees' speech](#)

Journalists have long faced obstacles in their pursuit of truth, but in recent years, a troubling trend has emerged: government-imposed gag rules that restrict public employees from speaking freely with the press. These restrictions, often enforced through public information offices or direct bans on communication, limit transparency and public accountability. In a recent episode of *E&P Reports*, Mike Blinder sat down with veteran journalist Kathryn Foxhall and First Amendment attorney Frank LoMonte to discuss the issue, its legal implications, and what journalists can do to push back.

ANNOUNCER:



This is *E&P Reports*, a podcast from *Editor & Publisher* magazine, the authoritative voice of news media since 1884, serving newspapers, broadcast, digital, and all forms of news publishing.

MIKE BLINDER:

And warm greetings once again! Mike Blinder, publisher of *E&P Magazine*. As always, we kick off by urging those on podcast platforms to follow us. For those watching the video version on our YouTube channel, please engage by subscribing below. Smash that bell to the right—you'll get an update every time we upload a new episode of this weekly vodcast series dedicated to news publishing, which we call *E&P Reports*.

Journalists have always faced obstacles in their pursuit of truth, but in recent years, a troubling trend has emerged: government-imposed gag rules. These restrictions, often enforced through public information offices or direct bans on communication, limit transparency. That is *E&P's* position, and today, we're diving into this critical issue with two experts.

We're lucky to have both on the program today. Kathryn Foxhall, I have you listed as a veteran journalist. Let me do this—since *E&P* covers AI so much, we now have a tradition of asking ChatGPT who our guests are. Kathryn, you tell us how well it did. Are you ready?

This is what ChatGPT says about you:

KATHRYN FOXHALL:

Okay then!

MIKE BLINDER:

"A veteran freelance journalist and longtime advocate for press freedom, particularly in the fight against government-imposed gag rules that restrict journalists' access to public employees. You've spent decades reporting on health and government issues, including extensive work covering the Centers for Disease Control and Prevention (CDC). You've also been a vocal critic of the growing practice of requiring public employees to obtain approval before speaking to journalists, arguing that these restrictions amount to unconstitutional censorship. As a key point person, you are doing this work for the Society of Professional Journalists (SPJ)."

How did it do? Is that pretty accurate?

KATHRYN FOXHALL:

That's fine. I like that.

MIKE BLINDER:

All right, you're good! Now, our other guest is Frank LoMonte. Frank, if I may, can I read you your profile from ChatGPT, and you can tell us how it did?

FRANK LoMONTE:

Fire away! I'm very curious.

MIKE BLINDER:

Laughs — "You are senior counsel at CNN and a leading expert in First Amendment law, press freedom, and government transparency. You have spent your career advocating for the rights of journalists and the public to access government information, particularly in cases involving censorship and gag rules. Before joining CNN, you served as director of the Brechner Center for Freedom of Information at the University of Florida. You have published influential legal research, including the 2019 white paper on gag rules. You are a co-chair of the Free Speech and Free Press Committee of the American Bar Association's Section of Civil Rights and Social Justice."

Not bad, huh?

FRANK LoMONTE:

Yeah, that's solid!

MIKE BLINDER:

It didn't mention this, but we've had Mickey Osterreicher, general counsel of the NPPA, on this program before. Do you know Mickey?

FRANK LoMONTE:

Very well. We've done a lot of work together over the years.

MIKE BLINDER:

I figured as much. Both of you are here to discuss a very important issue—gag rules. I want to get your impressions, your thoughts, and your predictions. But first, let's take a quick break. Stay with us.

ANNOUNCER:



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MIKE BLINDER:

All right, let's kick off with Frank. Your research has highlighted the legal and constitutional issues surrounding gag rules. Treat me like I'm a three-year-old—break down how these restrictions violate the First Amendment. Give me that *Axios*-style bullet point summary.

FRANK LoMONTE:

Yeah, great question. Everyone needs a First Amendment 101 refresher these days. There's a lot of confusion and misinformation about what is and isn't covered under the First Amendment.

When I was at the University of Florida, I asked journalists and lawyers to tell me what legal issue was causing them the biggest headache. Overwhelmingly, they said: "Nobody at any of the agencies we cover will talk to us anymore."

This wasn't always the case. A generation ago, reporters could walk into a government office, introduce themselves, and ask questions. Now, whether it's the Pentagon or the smallest local police department, employees are terrified they'll get fired if they talk to a journalist.

That's interesting because there's a *rich* body of case law—including from the U.S. Supreme Court—that says you don't surrender all your First Amendment rights just because you take a government paycheck. So how do these gag rules coexist with that case law?

The answer is simple: *they don't*. It's not legal. When these policies have been challenged in court, the courts have consistently ruled that they go too far. The government can tell employees not to disclose confidential information, but it *cannot* impose blanket bans on speaking to the press.



MIKE BLINDER:

All right, we've heard from the legal expert. Now, let's turn to Kathryn. Kathryn, I hope you don't mind me calling you the **receptacle** for information, but it seems like you've been tasked by the Society of Professional Journalists (SPJ) to collect reports on how journalists are affected by gag rules.

We recently helped amplify your message through *E&P's* newsletters. Can you share some of the most concerning trends you're seeing from the information coming your way?

KATHRYN FOXHALL:

Well, this trend started over 40 years ago. The editorial we published on your site includes links to insiders confirming this. While reporters saw it happening, we didn't fully understand the extent until insiders began speaking up.

It began during the Reagan administration and worsened over time because there was no pushback. Journalists didn't fight back, and that was my experience at the federal level. Now, of course, it has spread across the country, affecting all kinds of offices.

I've been in a long-term state of panic about this. Covering agencies like the CDC, we used to be able to pick up the phone and talk to people. I remember times when a high-level official would give me a perfectly good, factual story. But then, if I asked, "*Doctor, is there something you could tell me if your name weren't attached to it?*"—boom! An explosion of suppressed information would come out.

I had this strong sense that while the first story would have been true, well-sourced, and professionally crafted, it was still propaganda—carefully managed and sanitized. That shook me back then, and it still shakes me today.

Journalists haven't fought this, and as a result, it has gotten worse over the decades. We think we're getting the real stories, but because of these gag rules, we often can't talk to employees confidentially. And the truth is, we don't always know what's hidden behind those restrictions.

Now, thanks to Frank's work, we've had one legal win—through a settlement, not a case moving forward.

MIKE BLINDER:

Are you referring to Brittany Hailer's case?

KATHRYN FOXHALL:

Yes, indeed. And we have attorneys out there—though I won't name names yet—actively looking for other cases to challenge.

MIKE BLINDER:

Frank, for those who don't know, could you give us a quick overview of that **victory**? What precedent does it set for journalists, and how do you think it moves the needle in the right direction?

FRANK LoMONTE:

Great question.

For those unfamiliar, Brittany Hailer was working as a journalist for a small nonprofit startup in Pittsburgh. She was providing dogged coverage of persistent issues at the Allegheny County Jail, which had a history of inmate deaths and severe medical neglect.

In her reporting, she hit a brick wall—these gag rules that completely forbade employees from speaking to the press. It was an outright blanket ban:

No employee of Allegheny County, nobody working at the jail, can grant an interview or share any information about their work with the press. Period. Full stop.

This left journalists with nothing but sanitized press releases—not the full picture of what was happening inside a troubled correctional facility.

Brittany wasn't satisfied with that. Fortunately, through SPJ, she connected with Kathryn, who introduced her to the Yale Law School Media Freedom & Information Access Clinic—a top-tier First Amendment legal clinic that takes cases pro bono.

They filed suit in U.S. District Court, relying on decades of precedent—which, as we've mentioned, is clear, forceful, and unanimous but widely ignored.

The case was so well-prepared that Allegheny County didn't even try to defend it. They simply came to the bargaining table and said, *"What do you want?"*

In the settlement, they reformed their policies to create a more balanced approach. It's not the ideal policy I might have written, but it's a meaningful compromise. It makes clear that while employees can't share confidential information, they absolutely have the right—when speaking as private citizens—to express concerns about government affairs.

This is huge, because the U.S. Supreme Court has repeatedly emphasized that we don't want public employees to be silenced. These people have unique, insider expertise. If they can't talk, how else does the public learn what's really going on inside the government?

MIKE BLINDER:

So, how influential is this?

FRANK LoMONTE:

It's not as powerful as a court ruling, of course. The *gold standard* would be a decision from the Supreme Court or even a federal appeals court—a ruling with binding legal precedent.

But for that to happen, you need a legal opponent willing to fight—an entity that will take it all the way through appeals.

Here, Allegheny County folded immediately. For Brittany, the best course of action was to settle. She could have dragged this out for years hoping for a broader precedent, but when your opponent gives you 90% of what you want, you take the win.

MIKE BLINDER:

Frank, are all cases winnable? Or are there certain cases where journalists should immediately reach out to SPJ?

FRANK LoMONTE:

Great question.

The ideal case is one where there's a written policy—something in black and white that says:

"Nobody in this agency is allowed to talk to the press."

Or, as in Allegheny County's case:

"Nobody can talk without the warden's permission."

And since the warden never gives permission, that amounts to a blanket gag rule.

The harder cases are ones where it's not an official rule but instead just water cooler talk—unwritten expectations that employees know they'll get in trouble for talking to the press.

For example, the Chicago Police Department has a policy that—on paper—is perfectly legal and aligned with the First Amendment. But in practice, it's well known that if you speak to a reporter, you'll be punished, demoted, or reassigned.

That's harder to challenge in court. Why?

Because the agency can walk in with its written policy and say:

"See? Our policy is legal! We're not violating anyone's rights."

So those cases are tougher.

MIKE BLINDER:

So, what's the takeaway for journalists?

FRANK LoMONTE:

When you run into one of these gag rules, go into reporting mode.

- Ask for the policy.
- Request the rule in writing.
- See the employee handbook.

Sometimes, you'll find it doesn't actually exist—it's just an unspoken practice. Or sometimes, as in Chicago, the real issue is that the policy isn't being honored.

Honestly, that would make a great story for a journalist. If someone dug into the Chicago Police Department, interviewing officers who feel restricted despite the policy on paper, that would be powerful reporting.

MIKE BLINDER:

Okay, Kathryn, a good deal of our audience consists of executive publishers and editors—those who make the senior decisions about how news is funneled through their organizations. This is something I really want to ask you.

What advice do you give to them? The Society for Professional Journalists is primarily advocating for that street fighter journalist—the one out there chasing down the news. But what about newsroom leadership? Should they be encouraging their teams to reach out to you every time they hit this brick wall?

KATHRYN FOXHALL:

I think so. And of course, the reporter can bring the case, but the news outlet itself can also bring the case, right? I would highly encourage them—almost plead with them—to support this effort. Don't just say, *"Well, just get the quote and move on."*

MIKE BLINDER:

Exactly.

KATHRYN FOXHALL:



I can't promise that going through this hassle will make you more money. And, of course, it's not like newsroom leaders don't already have enough on their plates. I suspect they don't want unnecessary fights with those in power. But ethically, I would beg them to stand up and fight this.

If these rules exist in your community—whether in schools, nonprofits, or any organization—you have a real problem that is endangering the people and programs in that community.

You don't wait until the fire department fails and people die to start asking questions. Firefighters, public health officials, or any government employees may have seen problems for years, but they were told not to speak. That is exactly what's happening in journalism today.

Waiting for something bad to happen—when we could have been getting the truth all along—is unethical journalism.

MIKE BLINDER:

All right, Kathryn, the music's about to play us off—we try to keep these interviews to about 20 minutes. If we go too long, we start losing listeners.

So this is your chance. You've got an audience of thousands of news publishers listening right now. You're representing one of the most critical issues in journalism today, and you're working with the Society of Professional Journalists to fight it.

This is your moment. Make your plea. What should journalists and newsrooms be doing next? And what else can we do to help support this effort?

KATHRYN FOXHALL:

I would plead with people to take this as a serious ethical issue.

As a public health reporter, I fully believe that we could have prevented or alleviated the pandemic's devastation if journalists had been able to freely communicate with sources at the CDC in the years leading up to it. But we weren't. We were given hell just trying to speak to anyone.

This isn't an abstract issue. It's life and death.

If you're an editor or publisher, I know how hard you're working to just get the next issue out. I've been there. I know what it's like to just push forward with the best information you have.

But I am pleading with you—make this an ethical priority.

Do everything you can to ensure that you're truly seeing and hearing what's out there, because if you don't, people could die, essential programs could fail, and entire institutions could collapse.



Right now, 50,000 people in the Department of Health and Human Services are banned from talking to journalists. And that's just one agency. It's happening everywhere, across the country.

MIKE BLINDER:

Kathryn Foxhall, veteran journalist and SPJ's point person on the fight against gag rules. Frank LoMonte, senior counsel at CNN and a leading First Amendment attorney.

We deeply appreciate both of you for your time and for continuing this critical fight. Please stay in touch with us at *Editor & Publisher*—we'll do everything we can to help amplify this message.

Thank you both.

KATHRYN FOXHALL:

Thank you, Mike.