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I'm a lawyer who sued Alex Jones on behalf of the Sandy Hook families, leading to his deplatforming. The social media ban of Trump is troubling.

By Mark Bankston | Jan. 20th, 2021

It was nearly three years ago that I brought **lawsuits against Alex Jones** on behalf of Sandy Hook families who were targeted by his malicious false broadcasts and campaign of personal harassment. A year later, I sat across the table from Jones during a deposition where he tried to tell me, under oath, that **some form of "psychosis" was responsible for his actions**. Those lawsuits continue to drag on as Jones pursues meritless appeals while **racking up \$100,000 in sanctions from the court** before even seeing a jury.

But back in 2018, those lawsuits, and Jones' increasingly erratic behavior in their wake, set in motion a series of events which led most **social media platforms** to ban his accounts. At the time, I was greatly unnerved by the haphazard way this all went down. I was not alone. **Questions arose** about the tech giants' transparency, the standards they applied, and whether they even had standards at all.

Ban hammer

In Jones' case, I think the facts show he was a mayhem agent. On this, Twitter CEO Jack Dorsey and I agreed. But I failed to see why Jones wasn't just as much of a threat in 2015 when he was uploading videos showing maps to find my clients and telling his audience they needed to be looked into. Despite my clients' pleas, the tech giants did nothing even after one of Jones' followers was sent to federal prison for **stalking and threatening their lives**. The tech giants' later actions against Jones in 2018 seemed arbitrary. Rudderless.

When news broke that **Trump had been banned**, I felt the same uneasiness. Speaking personally, it felt like the right choice, but it did not seem to be the result of a reasoned process. Just like Jones, Trump had violated these rules many times before. Now, the suspension appeared motivated by something other than consistent application of the Terms of Service.

The social media companies have long shown they will pick and choose when to enforce their rules, often with bizarre results. Users already know their own accounts are subject to inexplicable deletion by a capricious moderation system, but the ban of the president reinforced the notion that the tech giants are indecisive, unpredictable, and opaque, all of which is true.

I also knew that many of the purveyors of misinformation would seize upon this clumsiness – four years in the making – by picking up the banner of free speech, advancing many of the same criticisms I am making here for their own malicious purposes.

We are unprepared for the new information landscape

The internet democratized information, closing the chapter on a world in which traditional media with their TV networks and newspapers were nearly the exclusive source of information. Never before has humanity enjoyed such unparalleled access to both information and a platform for public speech. But this liberation from spoon-fed media left us vulnerable to information manipulation by actors of all motivations. Alex Jones was prophetic when he named his media empire "InfoWars."

Jones knows he is but one participant on this battlefield, and like many of his imitators, including President Trump, he is all too aware that his best defense is to point to the very real information manipulation of his opponents. Jones and President Trump are not wrong when they say that mainstream sources frequently mislead their audiences. And it gives them license to do likewise as enemy combatants.

This confusing mishandling of misinformation applies to all political sides. Back in 2017, Twitter fabulist Louise Mensch was spreading fanciful claims on her verified account that sealed indictments had been issued against Trump and that the death penalty was being considered for White House Advisor Steve Bannon. Addressing this new breed of charlatan, Maya Kosoff [argued in Vanity Fair](#) that Twitter should "withhold the sheen of legitimacy from people who have a history of spreading falsehoods to large audiences on the platform."

A good idea, but it never gained steam, whether on Twitter or as a matter of cultural practice. Few disinformation agents encounter meaningful stigma for their actions.

The path forward

Over the years, calls for reform to combat misinformation and lies have grown more aggressive. Proposals range from reconfiguring First Amendment jurisprudence to subjecting the tech giants to a new regulatory apparatus. Some of the experts I talk to believe fines against social media platforms are the best answer.

Sascha Baron Cohen, [in a speech at the Anti-Defamation League](#), floated the idea of product liability lawsuits, allowing plaintiffs to sue Twitter for an "unreasonably dangerous product" on the same terms as a tire or a toaster.

These proposals each have their own allure. They also invite profound dangers. Mark Verstraete and Derek Bambauer, examining this problem in "The First Amendment Law Review," wrote in their article "[Ecosystem of Distrust](#)" that misinformation is "grounded in long-term political and sociological changes in America rather than in very recent technological or jurisprudential changes. Complex problems typically lack simple answers, and fake news is no exception."

Their article hoped to slow knee jerk calls for reform "because fast or straightforward fixes will likely make matters worse." As someone who spent the past three years on the frontline of this

fight, I echo their warning. We'd do well to ponder Charles Dudley Warner's adage: "Everybody complains about the weather, but nobody *does* anything about it."

Adjusting to the new information climate will not be possible through *ad hoc* decisions by Silicon Valley or patchwork legislation passed in haste. Much of it will come by restoring journalism. My friend Brooke Binkowski, editor at TruthOrFiction.com and a consulting expert in the Jones lawsuits, believes that massive funding of independent public journalism, subsidized by the tech giants, is a path forward. I like this more than I like re-writing speech law.

But much of the solution must come by fixing a society that subjects its citizens to such significant material and psychological deprivations, a society that has recoiled from a series of failures in governance.

As the authors explained in "Ecosystem of Distrust": "The rise of fake news is both a symptom and an effect of a widespread decline in America's public trust in institutions and experts. Since the Watergate era, people have lost faith — sometimes overwhelmingly — in nearly every major American institution." One hardly need be a historian to recognize that a similar loss of faith in institutions caused by the failures of austerity politics allowed Nazi propaganda to flourish in pre-war Germany.

We all seem to understand we live in a society vulnerable to exploitation from disinformation, but I have become convinced we are flying blind in terms of how to address it. And I have come to fear the implications of a course of action pursued in haste under the political exigencies of this moment.

It is for that reason that I publicly call upon the incoming Congress to commission a panel to study and report on the public vulnerability to disinformation and steps that can be taken consistent with a free and democratized internet. These solutions must be based in a politics that seeks to improve the esteem by which Americans view their governing institutions, institutions whose first function must be improving the material conditions of American life.

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