

Whistling at the Fake

The Crucial Role of Whistleblowers in Countering Disinformation

Technical Report

**The Critical Role that Whistleblowers Play
in Countering COVID-19 Disinformation**

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GOVERNMENT
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PROJECT



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The Critical Role that Whistleblowers Play in Countering COVID-19 Disinformation

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Government Accountability Project, founded in 1977 by the Institute for Policy Studies, is the international leader in whistleblower advocacy. Through litigating whistleblower cases, publicizing concerns and developing legal reforms, Government Accountability Project's mission is to protect the public interest by promoting government and corporate accountability. Government Accountability Project's expertise ranges across issue areas, from government to private sector, with programs in corporate and financial accountability, the environment and energy, the food system, national security, and public health. Government Accountability Project has empowered over 8,000 whistleblowers with legal protection and advocacy expertise so the truth they tell makes a positive impact. The organization works continuously to provide expertise and advocacy for stronger whistleblower rights and has helped pass over 35 laws or policies ranging from Washington, DC to the United Nations. By working with whistleblowers, Government Accountability Project holds the powerful accountable and protects the public interest because the truth deserves a champion.

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Definitions

For purposes of this report the author utilized the following definitions:

- **Conspiracy theories:** Intentionally false information about the ultimate causes of social and political events and circumstances with claims of secret plots of two or more powerful actor.
- **Disinformation:** The byproduct of a deliberate attempt to mislead, harm, or manipulate.
- **Fake News:** Print or online news articles, televised news, or social media content that is intentionally false or misleading.
- **Fraud:** Intentional deception utilizing a false statement, misrepresentation, or deceitful conduct to gain something of value, usually money.
- **Infodemic:** An overabundance of information about a problem that is unreliable, spreads rapidly, and makes a solution more difficult to achieve by making it hard for the public to find trustworthy information when they need it.
- **Misinformation:** False or inaccurate claims shared without the intention to deceive.
- **Whistleblower:** An individual, business, or group of individuals or businesses who makes a disclosure to an internal, external, or public channel,¹ and based on their reasonable belief such disclosure provides truthful evidence of misconduct or wrongdoing, including but not limited to waste of funds; fraud; abuse of authority; a violation of rules, laws, or procedure; or dangers to health and safety. A whistleblower's disclosures do not have to be proven right, provided they had a reasonable belief that the information they disclosed was true. Someone who discloses information they know to be untrue is not a whistleblower.

¹ According to an Association of Certified Fraud Examiners report, in 33% of cases where a tip was made the whistleblower did not use a formal reporting mechanism. Instead, they reported their suspicions directly to supervisors, investigators, or other interested persons. In examining COVID-19 whistleblowing social media was a channel used often by whistleblowers. Thus, we chose to look beyond legally authorized channels as qualified whistleblowing and open our definition to include disclosures through any channel.





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Abstract

The purpose of this study is to examine the critical role that whistleblowers played in countering disinformation during the COVID-19 pandemic. This research was funded by the North Atlantic Treaty Organization's Public Diplomacy Division as part of its resilience projects. Although this is a global study, we primarily examine selected case studies in the U.S., U.K., and France that illustrate the important role that whistleblowers played in countering disinformation during the COVID-19 pandemic. Through researching information in the public domain, we also explore global trends in whistleblowing during the COVID-19 pandemic.

Existing research about disinformation and infodemics during the pandemic and countering disinformation is widely available, however most did not explore the role of whistleblowers in countering disinformation or the importance of prioritizing whistleblower protection as a solution for building resilience to disinformation. As such, it is important to address this topic.

Our research found that whistleblowers played an important role in countering disinformation during the COVID-19 pandemic. However, governments or corporations attempted to silence them, sending a chilling message to would-be whistleblowers and ultimately harming resilience to disinformation. The laws that protect free speech were inadequate to protect whistleblowers (although there are some exceptions, as highlighted by our below case study on Dr. Rick Bright), the channels for investigation were unable to handle the disclosures adequately, and nations failed to prioritize whistleblower protection (such as passing legislation to protect them, increasing funding of investigative authorities responsible for responding to whistleblower disclosures and retaliation complaints). We hope this research will help inform future policy decisions and priorities.

Introduction

Fraudsters and disinformation instigators who thrive on insecurity² worsened the length and severity of the COVID-19 pandemic. False information caused confusion and conspiracies about vaccines, masks, and who or what could be trusted. People died because of disinformation's negative impact on the public's vaccine acceptance³ and adherence to public safety protocols. As of October 2021, in the U.S.

² Europol. (2020, March 7). How Criminals Profit from the Covid-19 Pandemic [Press release]. Retrieved from: <https://www.europol.europa.eu/media-press/newsroom/news/how-criminals-profit-covid-19-pandemic>

³ Nather, David. (2021, April 1). Axios-Ipsos poll: The misinformed are less likely to get vaccinated. *Axios*. Retrieved from: <https://www.axios.com/axios-ipsos-poll-covid-misinformation-vaccination-rates-0849c642-9999-4568-9769-c1891c5e5291.html>.; See also, de Figueiredo, A., de Graaf, K., Larson, H.J., Loomba, S., Piatek, S.J. 2021. Measuring the impact of Covid-19 vaccine misinformation on vaccination intent in the UK and USA. *National Library of Public Medicine: National Center for Biotechnology Information*. 5(3),337-348. doi: 10.1038/s41562-021-01056-1





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alone, Johns Hopkins researchers estimate that somewhere between two and twelve million people were unvaccinated because of misinformation or disinformation.⁴

Whistleblowers are truth-tellers who are often the first to detect fraud, waste of funds, illegality, substantial dangers to public health and safety, and other forms of wrongdoing or public interest threats. This research paper analyses the significant role that whistleblowers played in countering disinformation and protecting the public interest during COVID-19. It also explores the role that nation states, political groups, corporations, the media, health professionals,⁵ and individuals including internet influencers⁶ played in spreading disinformation, and the various challenges to counter it.

This research paper argues that whistleblowers are essential for pandemic prevention and mitigation. However, it also finds that the systems for whistleblowers to deliver the truth have more shoots than ladders, and the systems for liars have more ladders than shoots.

The central research questions explored include the following:

- (1) Did whistleblowers make, or attempt to make, a difference in countering disinformation during the pandemic?
- (2) What are the different factors that may have deterred would-be whistleblowers from coming forward?
- (3) How did whistleblowers make disclosures and what were the common trends in responses?
- (4) What role has social media and big tech played in supporting or suppressing whistleblowing speech?
- (5) What are the different solutions that address the common problems whistleblowers experience so that whistleblowers can be more effective in deterring future public health and infodemic crises?

Our conclusions confirm the classic role of whistleblowers using the truth to challenge abuses of power:

- (1) Whistleblowers were an important tool for countering disinformation during the pandemic;
- (2) Whistleblowers and whistleblowing speech was suppressed by more powerful forces;
- (3) Some people spreading disinformation claimed to be whistleblowers;
- (4) Social, digital, and print news media were used by whistleblowers to report evidence of wrongdoing despite the risks;

⁴ John Hopkins University: Bloomberg School for Public Health. (2021). *Covid-19 Vaccine Misinformation and Disinformation Costs an Estimated \$50 to \$300 Million Each Day*. Retrieved from: https://www.centerforhealthsecurity.org/our-work/pubs_archive/pubs-pdfs/2021/20211020-misinformation-disinformation-cost.pdf.

⁵ Carmichael, F. Haynes, C. (2021, July 25). The YouTubers who blew the whistle on an anti-vax plot [Blog]. *BBC Trending*. *BBC News*. Retrieved from: <https://www.bbc.com/news/blogs-trending-57928647>.

⁶ Ibid.





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- (5) There was an increase in whistleblowing and the utilization of anonymity, which posed challenges for accountability.
- (6) Governments need to prioritize providing improved, safe, and effective reporting options for whistleblowers.

Methodology and limitations

This study was designed to explore instances of misinformation, disinformation, conspiracy theories, fraud, and scams during COVID-19, and the role of whistleblowers in countering them. We relied primarily on the review of secondary materials including information obtained through monitoring print and digital media, and statements from governments, journalists, NGOs, and academia. We examined the type of whistleblowers reporting information (such as employees, citizens, or businesses), the channels used for reporting, the impact of the disclosure, the degree to which the whistleblowers were supported or attacked and the outcomes of their disclosure.

The scope of this study primarily focused on illustrative whistleblower cases from three NATO countries: United States, United Kingdom, and France. The criteria for the case studies looked at instances of whistleblowers who disclosed COVID-19 disinformation that had or would have had a significant harmful impact on the public, either in terms of their right to know, their taxpayer dollars, their trust in government or their public health and safety. However, as COVID-19 disinformation whistleblowing is a global phenomenon, this report also includes global cases and trends.

In March 2020 Government Accountability Project launched a broader study to examine instances of whistleblowing, whistleblower retaliation, gag-orders, and COVID-19 fraud around the world. Although this study is ongoing, we used its cases for this research and trends from the case data were used to support this report's findings.

The biggest limitation is a lack of access to information. Whistleblowing during the pandemic was not tracked by governments in a centralized way at national or international levels. In both government and media reports related to disclosures, they seldom specified the term whistleblower so searches on media, social media, legal, or government websites only produce limited results. Furthermore, there was an increase in the utilization of anonymity and confidentiality of identity when making disclosures making the details of the original sources unavailable.

The biggest assumption made is that whistleblowers make up a large percentage of tips about fraud, and that evidence of fraud reporting and subsequent prosecution indicates the role of whistleblowers in combatting such fraud. A study by the Association of Certified Fraud Examiners found that 43% of fraud schemes were detected by a tip – the report's analysis pertains to fraud schemes





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generally and did not isolate pandemic-related fraud.⁷ We define such tips as whistleblowing irrespective of whether the reporting person (legal or natural) would meet the legal definition in a given country. We also assumed that the sources utilized describing the cases were factually correct.

Overview

Whistleblowers at the Beginning of the Pandemic

Since the beginning of the pandemic, Government Accountability Project has tracked COVID-19 related whistleblower cases around the world. There are common trends across nations, but one stands out. Whistleblowers who made external or public disclosures were either silenced or fired. As COVID-19 spread beyond China's borders, whistleblowers around the world warned of dangers and were met with retaliation meant to silence them and chill others from making similar disclosures.⁸ For example, U.S. corporations like Delta Airlines, Target, Amazon, and General Electric told employees to keep quiet about COVID-19 cases.⁹ U.K. National Health Service (NHS) bureaucrats issued gag-orders to stop healthcare workers from reporting issues.¹⁰ Entire nations instituted gag-orders such as Bangladesh,¹¹ Thailand,¹² Malaysia,¹³ and Honduras.¹⁴

⁷ Association of Certified Fraud Examiners. Report to the Nations, 2020 Study on Occupation Fraud and Abuse. Retrieved from: <https://acfepublic.s3-us-west-2.amazonaws.com/2020-Report-to-the-Nations.pdf>

⁸ Nicaragua: doctors fired for covid-19 comments, Cases unreported amid Government mismanagement. (2020, June 23). *Human Rights Watch*. Retrieved from: <https://www.hrw.org/news/2020/06/23/nicaragua-doctors-fired-covid-19-comments>; See also, Staff Correspondent. (2020, March 23). Spreading Rumors: Doctor put on 3-day Remand. *The Daily Star*. Retrieved from: <https://www.thedailystar.net/city/news/spreading-rumours-doctor-put-3-day-remand-1884649>; See also, Roblin, Sebastien. Capt. Brett Crozier risked his job to protect sailors from coronavirus. Then he got penalized. (2020, January 17). *NBC News*. Retrieved from: <https://www.nbcnews.com/think/opinion/capt-brett-crozier-risked-his-job-protect-sailors-coronavirus-then-ncna1176396>

⁹ Eidelson, Josh. (2020, August 27). Covid gag rules at U.S. Companies are putting everyone at risk. *Bloomberg Businessweek News*. Retrieved from: <https://www.bloomberg.com/news/features/2020-08-27/covid-pandemic-u-s-businesses-issue-gag-rules-to-stop-workers-from-talking>

¹⁰ Worrall, W. (2020, April 9). NHS Coronavirus Gag Orders Are Disgustingly Orwellian. Retrieved March 14, 2022, from CNN.com website: <https://www.cnn.com/nhs-coronavirus-gag-orders-are-disgustingly-orwellian/>

¹¹ Rahman, M. Shamsur. (2020, 9 April). Hasan warns of tough actions against COVID-19 rumour creators. *The Independent, Bangladesh*. Retrieved from: <https://m.theindependentbd.com/post/24400>

¹² Thailand: COVID-19 clampdown on free speech critic arrested, state of emergency censorship threatened. (2020, March 25). *Human Rights Watch*. Retrieved from: <https://www.hrw.org/news/2020/03/25/thailand-covid-19-clampdown-free-speech>

¹³ Kahn, Irene. Office of the United Nations High Commissioner for Human Rights. (2021, March 21) *Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* [Formal communication]. Retrieved from: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26287>

¹⁴ Camilleri, M., Catharine, C., & Lanza, E. (2020, August). *Covid-19 and Freedom of Expression in the*





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The Increase of Whistleblowing

There are indications that the number of disclosures increased during the pandemic in some sectors despite restrictions of movement. When looking at data from the reports of government agencies that investigate whistleblower disclosures, we assumed that an increase in volume of disclosures generally was an indication of increased whistleblowing related to the pandemic, although the limitation is that the reports rarely reveal the topics or other specifics of the disclosures. In Fiscal Year 2020, the Securities Exchange Commission's Whistleblower Office received a 31% increase in tips from the previous highest tip-volume year in 2018, and in Fiscal Year 2021, the Commission received a 76% increase from the previous year.¹⁵ In the U.K., the 2021 annual report on whistleblowing from healthcare regulators,¹⁶ which is comprised of the General Chiropractic Council, General Optical Council, General Medical Council, General Dental Council, General Osteopathic Council, General Pharmaceutical Council, the Health & Care Professions Council, and the Nursing & Midwifery Council provides anecdotal evidence of increased whistleblowing.¹⁷ For instance, the General Medical Council (GMC) reported that it received 43 concerns between April 2020 and March 2021, which was an increase from 36 the previous year. Of those, 17 were made by doctors, 10 by healthcare professionals.¹⁸ One possible explanation for the continued large volume of whistleblower disclosures is that beyond the public health violations that threaten us all, the emergency status resulted in massive stimulus spending without necessary safeguards and the relaxation of procurement systems and legal frameworks allowed corruption to thrive. Meaning there were enough people that had a crisis of conscience that the many personal and professional risks of speaking up did not deter them.¹⁹

Americas. The Dialogue: Leadership for the Americas. Retrieved from: <https://www.thedialogue.org/wp-content/uploads/2020/08/Covid-19-and-Freedom-of-Expression-in-the-Americas-EN-Final.pdf>. Note, this list is not exclusive. Other nations include Iran, Cambodia, Philippines, Nigeria, Bolivia, Cuba, and Argentina. Among the more alarming examples is El Salvador where armed forces destroyed the equipment of journalists who were reporting on the pandemic.

¹⁵ U.S. Securities and Exchange Commission. (2021). *2021 Annual Report to Congress Whistleblower Program*. Retrieved from: <https://www.sec.gov/files/owb-2021-annual-report.pdf>

¹⁶ Whistleblowing disclosures report 2021 (2021). General Chiropractic Council, General Medical Council, General Optical Council, General Dental Council, General Osteopathic Council, General Pharmaceutical Council, Health & Care Professions Council, & Nursing Midwifery Council. Retrieved from: https://www.gmc-uk.org/-/media/documents/whistleblowing-report-2021_pdf-87748310.pdf

¹⁷ Ibid. It is important to note that not all government agencies experienced an increase in reporting. Some experienced a decrease due to COVID-19, often depending on the mission of the agency and how that might relate to a slow-down or speed-up of reporting. When we looked across the agency reports, if considering the totality of reported intakes, the overall experience was increased numbers of reports.

¹⁸ GMC has a confidential helpline for those concerned about patient safety and guidance for doctors on raising and acting on concerns.

¹⁹ Whistleblowers experience many forms of retaliation. See, Garrick, Jacqueline, and Martina Buck. (2020). Whistleblower retaliation checklist: a new instrument for identifying retaliatory tactics and their psychosocial





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The Lifesaving Impact of Whistleblowers

Freedom of expression is seen as the biggest threat by those with something to hide, but whistleblowers are the solution not the problem. To be an effective whistleblower, it can take resources (such as skilled lawyers, effective investigative agencies, and strong public support) to reverse employers' initial opinions of whistleblower disclosures from a view of skepticism to a view of acceptance. For instance, U.S. Department of Homeland Security Transportation Security Administration (TSA) agency leaders ignored whistleblower Jay Brainard's warnings that TSA was a major vector causing the airports to be the main vector for the first COVID wave. His attorney, Tom Devine, who co-founded the whistleblower protection organization Government Accountability Project, filed a whistleblower complaint on his behalf with the U.S. Office of Special Counsel.²⁰ After Mr. Brainard's story made national news, the TSA Administrator gave him an audience. Within days of their meeting, the Administrator announced a major overhaul of the agency's public health standards to require personal protective equipment (PPE) and barriers.²¹ These changes went into effect right before the U.S. Independence Day holiday. Unfortunately, Mr. Brainard's case was more of an anomaly.

The State of Anti-Retaliation Laws During the Pandemic

The World Health Organization described the spread of disinformation about the pandemic as a "massive infodemic" and a major driver of the pandemic itself.²² Its spread, sustainment, and impact could have been mitigated if whistleblowers' warnings were heeded and would-be whistleblowers felt safe coming forward. The successful whistleblowers alone were not enough to stop the damage. Globally, the inadequate policy developments in whistleblower protection left countless people without any rights against retaliation, including healthcare industry workers, which is a major reason why there was not more reporting – although some countries like the U.S. and U.K. whistleblower laws do protect many if not all healthcare workers.²³ Many whistleblowers were fired because of their disclosures without any ability to challenge the legality of the retaliatory decision. The result was alarming for several reasons, including

impacts after an employee discloses workplace wrongdoing. *Crisis, Stress, and Human Resilience: An International Journal* 2 (2): 76–93.

²⁰ Mak, Tim. (2020, 19 June). Whistleblower: TSA failed to protect staff, endangered passengers during pandemic. *NPR*. Retrieved from: <https://www.npr.org/2020/06/19/880564586/whistleblower-tsa-failed-to-protect-staff-endangered-passengers-during-pandemic>

²¹ Muntean, P., Wallace, G. TSA implements changes amid pandemic following whistleblower complaint (2020, July 19). *CNN*. Retrieved from: <https://www.cnn.com/2020/07/09/politics/tsa-whistleblower-report-coronavirus-changes/index.html>

²² Bontcheva, K., Posetti, J. (2020). Disinfodemic: deciphering COVID-19 disinformation. *United Nations Educational, Scientific and Cultural Organization [UNESCO]*. Retrieved from: <https://unesdoc.unesco.org/ark:/48223/pf0000374416?posInSet=15&queryId=3be830e7-538b-4f0f-811e-021fd3e4941c>

²³ Ambler, L. & Leger, C. (2021). *The Transnationalization of Anti-Corruption Law. [eBook online version]*. Routledge. Retrieved from: <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003174639-16/whistleblower-protection-leah-ambler-claire-leger>





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the chilling effect on would-be whistleblowers, and the loss of talent during a public health emergency. Once a whistleblower is blacklisted it can be difficult, if not impossible, to return to their profession.

The inability of government and corporate leaders everywhere to realize the important role of whistleblowers in countering disinformation explains the failure to prioritize passing laws and providing sufficient resources for systems that protect whistleblowers. For instance, most countries that ratified the UN Convention Against Corruption have not implemented Article 33, which addresses the importance of passing domestic laws to protect reporting people from retaliation.²⁴ Additionally, in the U.S., which was the first nation to pass a whistleblower law, Congress disregarded its own proven track record of preventing fraud by building strong whistleblower protections into emergency stimulus laws. Despite the introduction of the COVID-19 whistleblower protection bills in the House²⁵ and Senate,²⁶ and despite sustained advocacy from whistleblower groups, no COVID-19 spending laws passed by U.S. Congress included whistleblower protection.²⁷

As of March 8, 2022, only eighteen out of thirty (60 percent) NATO countries had comprehensive national whistleblower protection laws in force.²⁸ The EU Whistleblower Protection Directive²⁹ required all EU member states to transpose its provisions into their national legal framework by December 17, 2021. According to the EU Whistleblowing Monitor, eighteen member states delayed transposition, one did not start, and only eight have adopted laws (although not all are in force yet).³⁰

²⁴ Article 33 States: "Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention." See, United Nations Convention Against Corruption. (2003, 31 October). *General Assembly Resolution 58/4*. New York: United Nations. Retrieved from: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf Of the 189 UNCAC parties (as of 18 Nov. 2021), we estimate that as of March 14, 2022, 43 member states – counting the European Union – have comprehensive whistleblower laws, and 33 have sectoral laws (narrow in subject of protected speech).

²⁵ S.268 - 117th Congress (2021-2022): COVID-19 Whistleblower Protection Act. (2021, February 4). <https://www.congress.gov/bill/117th-congress/senate-bill/268>

²⁶ H.R.846 - 117th Congress (2021-2022): COVID-19 Whistleblower Protection Act. (2021, February 4). <https://www.congress.gov/bill/117th-congress/house-bill/846>

²⁷ In her testimony to Congress, Inspector General Peggy Gustafson credited strong whistleblower protections in the \$700 billion emergency stimulus law of 2009 for the low level of fraud under the act. See Devine, T. & Feinstein, S. The world abandoned Covid-19's best antidote: Whistleblowers. (2021, 15 March). *The Hill*. Retrieved from: <https://thehill.com/opinion/judiciary/542977-the-world-abandoned-covid-19s-best-antidote-whistleblowers>

²⁸ Albania, Belgium, Canada, Croatia, Denmark, France, Hungary, Iceland, Italy, Latvia, Lithuania, Netherlands, North Macedonia, Norway, Romania, Slovakia, U.S., U.K.

²⁹ Formally called the Directive on the protection of persons who report breaches of Union law.

³⁰ The Government of Portugal passed a whistleblower law that is not yet in force. For more information see, EU Whistleblowing Monitor (2021-2022) [Data set]. Retrieved from: <https://www.whistleblowingmonitor.eu/>





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The Impact of Financial Scams

Profit is a major driver behind disinformation, bringing such types of disinformation into “fraud” territory. Not all disinformation, and not all disinformation about the pandemic, is driven by profit motives, or profit as a primary motive. National or geopolitical interests, power, and control are other motives, and they may be the only motive or accompanied by secondary financial interests.

The spread of financial scams and fraud put the public at risk and was a barrier to progress during the pandemic. Financial fraudsters and those spreading disinformation are similar in that they use the emergency of the pandemic to send false or inaccurate information. Financial gain motivates fraudsters to deceive the public, and they combine consumer fear with false information to accomplish their goals. The U.K. lost more than £16 billion out of £129 billion (12.4 percent) due to COVID-19 scams.³¹ In May 2020, the Chief of the British Business Bank and several other lenders wrote letters to then-business secretary Alok Sharma, warning about the significant fraud and credit risks involved in the emergency stimulus loan schemes. Two years later Treasury Minister Theodore Agnew resigned over the Treasury’s lack of interest in the consequences of fraud on the economy or society.³² In the U.S., many corporations mislead the public and the government about products claiming to test or cure COVID-19. For example, Key Capital Corporation made statements that it could develop a vaccine for COVID-19 and make it available to the mass market in three to six months, provoking the Securities Exchange Commission to suspend trading of the company’s stocks.³³

Vaccine Disinformation: Who Wins and Who Loses

There are financial costs to infodemics that are difficult to measure. According to a study by Johns Hopkins University Bloomberg School of Public Health, COVID-19 vaccine misinformation and disinformation costs an estimated \$50 to \$300 million every day since May 2021 when vaccines were freely available in the U.S. for most adults.³⁴ The figures are based on their estimate that misinformation and disinformation cause between 5% and 30% of voluntary non-vaccination in the U.S., and as of October 2021 about 22% of the adult population chose to not vaccinate, leaving between two and twelve million

³¹ Jolly, J. (2022, February 22). UK lost up to from £16bn due to fraud and error in Covid loans schemes. *The Guardian*. Retrieved from: <https://www.theguardian.com/world/2022/feb/23/uk-lost-up-to-16bn-due-to-and-error-in-covid-loans-schemes>

³² Haslett, E. (2022, February 10). "It was as easy as clicking a button": How the government handed billions to fraudsters. *New Statesman*. Retrieved from: <https://www.newstatesman.com/business/2022/02/it-was-as-easy-as-clicking-a-button-how-the-government-handed-billions-to-fraudsters>

³³ Dreisbach, Tom. (2020, April 15). Top wall street regulators warn against coronavirus investment scams. *North Country Public Radio*. Retrieved from: <https://www.northcountrypublicradio.org/news/npr/835319145/top-wall-street-regulators-warn-against-coronavirus-investment-scams>

³⁴ Bruns, R., Hosangadi, D., MSPH, Trotochaud, M., MSPH, & Kirk Sell, T. (2021). COVID-19 Vaccine Misinformation and Disinformation Costs an Estimated \$50 to \$300 Million Each Day. *centerforhealthsecurity.org*. John Hopkins Bloomberg School of Public Health. Retrieved from: https://www.centerforhealthsecurity.org/our-work/pubs_archive/pubs-pdfs/2021/20211020-misinformation-disinformation-cost.pdf





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people unvaccinated because of misinformation or disinformation.³⁵ Then, based on the calculations of the cost of hospitalizations, the valuation of lives lost and long-term morbidity due to COVID-19, and the percentage of voluntary non-vaccinations due to misinformation or disinformation, they determined the daily range of the cost.³⁶

According to the Center for Countering Digital Hate's report "The Disinformation Dozen," twelve people are responsible for almost two-thirds of anti-vaccine content circulating on social media platforms.³⁷ One such person, Dr. Joseph Mercola, filed an affidavit in 2017 claiming his net worth exceeded \$100 million.³⁸ Mercola used social media to direct consumers to his website where he sold vitamins marketed misleadingly as products that could mitigate, prevent, treat, diagnose, or cure COVID-19 in people.³⁹ According to the U.S. Food and Drug Administration (FDA), Mercola's vitamins were misbranded, unapproved, and unauthorized products for the mitigation, prevention, treatment, diagnosis or cure of COVID-19.⁴⁰ Additionally, he contributed to sites like Substack and penned one of the site's five biggest anti-vaccine articles, which collectively generated at least \$2.5 million for the platform.⁴¹ On one hand, this example illustrates how social media platforms and other big tech intermediaries are at the forefront of the challenge to tackle countering misinformation and disinformation. On the other hand, the motivation to profit from disinformation may rise to the level of fraud. According to NewsGuard, a website that tracks websites that publish misleading information about the pandemic, \$2.6 billion in annual ad revenue went to misinformation websites.⁴²

Websites Spreading Disinformation

Facebook made public claims about their efforts to remove COVID disinformation. However, in February 2022, Facebook whistleblower Frances Haugen filed whistleblower complaints with the U.S. Securities Exchange Commission providing evidence that Facebook misled investors about its efforts to

³⁵ Ibid.

³⁶ Ibid.

³⁷ Center for Countering Digital Hate. (2021, March 24). The Disinformation Dozen. Retrieved from: https://www.counterhate.com/files/ugd/f4d9b9_b7cedc0553604720b7137f8663366ee5.pdf

³⁸ Ibid.

³⁹ Center for Food Safety and Applied Nutrition. (2021, February 18). *Warning Letter*. Retrieved from: <https://bit.ly/3KG3H8F>

⁴⁰ Center for Food Safety and Applied Nutrition (2021, March 4). *Warning Letter to Mercola.com, LLC*. Retrieved from: FDA website: <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/mercolacom-llc-607133-02182021>

⁴¹ Substack generates at least \$2.5 million in revenue from anti-vaccine newsletters per year. *Center for Countering Digital Hate (n.d)* Retrieved from: <https://www.counterhate.com/post/substack-generates-at-least-2-5-million-in-revenue-from-anti-vaccine-newsletters-per-year>

⁴² Social Impact Report (2022, January). *Social Impact Report*. News Guard. Retrieved from: <https://www.newsguardtech.com/wp-content/uploads/2022/01/NewsGuard-Social-Impact-Report-1.21.22.pdf>





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mitigate the spread of misinformation on COVID-19.⁴³ The complaint cited internal documents showing that Facebook knew misinformation and vaccine hesitancy was spreading, and that one in three people in the U.S. saw misleading or false information related to COVID-19.⁴⁴ Facebook allowed users to weaponize its platform to spread disinformation and allow conspiracy theorists to target people. Thanks to a whistleblower, Congressional and federal investigations are looking into these issues and the public exposure added pressure on Facebook to be more accountable.

In today's internet-centric world, disinformation can spread far and wide. As of March 2, 2022, NewsGuard stated that its COVID-19 Misinformation Tracking Center identified 546 websites publishing misinformation about COVID-19 in the U.S. (356), U.K. (21), Canada (number not listed but it is presumably among the 17 "other"), France (59), Germany (42), and Italy (51). NewsGuard even has its own hotline and online reporting channel for whistleblowers.

Disinformation and Gag-orders

A common tactic utilized by governments or powerful corporations to avoid getting caught for spreading disinformation is gag-orders, such as non-disclosure agreements that are job prerequisites, and ban employees or citizens from saying certain things to certain channels.⁴⁵ During the pandemic these threats were sometimes under the guise of stopping the spread of disinformation. Government leaders intentionally spread lies about the threat that COVID-19 posed, perhaps to avoid chaos and insecurity from mass panic. For example, in Nicaragua, until May 25, 2020 "President Ortega only recognized 25 cases and eight fatalities, declaring 'we have been able to counter the pandemic.'"⁴⁶ In the U.S., hospital administrators across the country attempted to hide the shortages of supplies and the severity of the pandemic by silencing doctors, nurses, and health care providers with threats of disciplinary action for reporting coronavirus patient caseloads and dwindling hospital supplies.⁴⁷ The motives for withholding or providing misleading information varied somewhat. The Government of Scotland, of example, said they

⁴³ Zakrzewski, C. (2022, February 22). Facebook whistleblower alleges executives misled investors about climate, covid hoaxes in new SEC complaint. *The Washington Post*. Retrieved from: <https://www.washingtonpost.com/technology/2022/02/18/whistleblower-facebook-sec-climate-change/>

⁴⁴ Ibid.

⁴⁵ Brown, T. (2020, April 21). The reason hospitals won't let doctors and nurses speak out. *The New York Times*. Retrieved from: <https://www.nytimes.com/2020/04/21/opinion/coronavirus-doctors-nurses-hospitals.html>

⁴⁶ Camilleri, M. Christie, C., & Lanza, E. (2020, August). *Covid-19 and freedom of expression in the Americas*. The Dialogue Leadership for the Americas. Retrieved from: <https://www.thedialogue.org/wp-content/uploads/2020/08/Covid-19-and-Freedom-of-Expression-in-the-Americas-EN-Final.pdf> ; de Córdoba, J., Montes, J. As coronavirus spreads in Nicaragua, official denials amplify risk. *The Wall Street Journal*. Retrieved from: <https://www.wsj.com/articles/as-coronavirus-spreads-in-nicaragua-official-denials-amplify-risk-11590246000>

⁴⁷ See, Public Citizen. (2020, March 27). [Formal Letter] Retrieved from: <https://www.citizen.org/wp-content/uploads/2514.pdf>; See, Gallegos, Alicia. (2020, March 25). Hospitals muzzle doctors and nurses on PPE, covid-19 cases. *Medscape*. Retrieved from: <https://www.medscape.com/viewarticle/927541>; See also, Kincaid, Ellie. Covid-19 daily: physician gag orders, 'coronavirus party'. (2020, March 25). *Medscape*. Retrieved from: <https://www.medscape.com/viewarticle/927528>





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would stop releasing data on Covid hospitalizations and deaths by vaccination status because they feared “the figures would be misrepresented by anti-vaccine groups.”⁴⁸

Policing Free Speech: The Boundaries of Free Speech and the Dichotomy of Social-Media, Big Tech, and Influencers in Spreading and Countering Disinformation

Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights guarantee the right to hold opinions without interference and to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any media. While freedom of opinion is absolute, freedom of expression may be restricted under certain circumstances. The State has a duty to refrain from interfering with that right and an obligation to ensure that others, including businesses, do not interfere with it.⁴⁹

Regulating free expression was a delicate balancing act during the pandemic where governments justified certain infringements on freedom as necessary to control the spread and impact of the virus. In Spain and Hungary, for instance, people who shared or created false information and jokes about the pandemic online were criminally prosecuted.⁵⁰ The European Council established the East Stratcom Task Force to track and address disinformation but was later criticized and sued by three Dutch news outlets when the service the task force it utilized, *EUvsDisinfo*, classified their articles as disinformation.⁵¹

Determining when governments or corporations infringe on the right to an opinion or freedom of expression is challenging, especially during the infodemic, which needlessly worsened and prolonged the pandemic. As of 4:30 pm CET on March 8, 2022, the World Health Organization reported 6,004,421 deaths from COVID-19 and 446,511,318 cases worldwide since December 2019.⁵² The desire to stop or prevent infodemics or any speech that might worsen or prolong the pandemic is understandable, but sometimes the actions are misguided. According to a report by Oxford researchers called “Profiting from the Pandemic: Moderating COVID-19 Lockdown Protest, Scam, and Health Disinformation Websites,” big tech companies like Google, Facebook, Apple, and others who are trying to stop COVID-19 disinformation and

⁴⁸ Mandavilli, Apoorva. The C.D.C isn’t publishing large portions of the covid data it collects. (2022, February 20). *The New York Times*. Retrieved from: <https://www.nytimes.com/2022/02/20/health/covid-cdc-data.html>

⁴⁹ Kahn, Irene. Office of the United Nations High Commissioner for Human Rights. 2021, March 21) *Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* [Formal communication]. Retrieved from: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26287>

⁵⁰ van Hoboken, J., & Fathaigh, R. (2021). Regulating Disinformation in Europe: Implications for Speech and Privacy. *UC Irvine Journal of International, Transnational, and Comparative Law* (6,3). Available at: <https://scholarship.law.uci.edu/ucijil/vol6/iss1/3>

⁵¹ Ibid.

⁵² World Health Organization (2022). WHO Coronavirus (COVID-19) Dashboard. Retrieved from: <https://covid19.who.int/>





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fraud on their platforms are also spreading it through online services, tools, and code used by websites that push fake news.⁵³

There is ample research available that provides analysis on the plethora of reasons why social media platforms are failing to tackle disinformation well, including the report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, “Disinformation and Freedom of Opinion and Expression.”⁵⁴ According to the international human rights organization Article 19’s research on missing voices and media censorship, many posts are removed by companies like Facebook, Twitter, and Youtube because of their broad and vague content rules and the inconsistent application of them that is subject to bias.⁵⁵ Wrongful removals affect the most vulnerable and marginalized groups including women, LGBTQI people, human rights defenders and journalists.⁵⁶ Article 19’s #MissingVoices campaign reported that social media platforms are restricting broad speech topics (beyond just pandemic-related speech) based on government legal requests, and from July-December 2018, 74% of government requests to remove content from Twitter came from Russia and Turkey.⁵⁷ To help guide “companies engaged in content moderation” provide “meaningful due process to impacted speakers,” a group of human rights organizations, advocates, and academic experts developed the Santa Clara Principles on Transparency and Accountability in Content Moderation.⁵⁸

YouTube influencers have both spread and helped stop COVID-19 disinformation. A great example is the case of the influencer marketing agency Fazze, which is a part of the digital marketing company AdNow, registered in Russia and the UK. Fazze offered to pay social media influencers around the world, including France and Germany, to spread false information about the Pfizer vaccine. Fazze claimed that

⁵³ Au, Y., & Howard, P., & Project Ainita; See also: Timberg, Craig. Programme on Democracy & Technology. Retrieved from: <https://demtech.oii.ox.ac.uk/research/posts/profiting-from-the-pandemic/#continue>; see also: Timberg, Craig. (2020, December 4). Covid disinformation sites often use tools from Google, Facebook, and Apple, report finds. *The Washington Post*. Retrieved from: <https://www.washingtonpost.com/technology/2020/12/04/covid-scam-disinformation/>

⁵⁴ Kahn, Irene. Office of the United Nations High Commissioner for Human Rights. 2021, March 21) *Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* [Formal communication]. Retrieved from: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26287>; See also, Conner, A., Simpson, E. *Fighting coronavirus misinformation and disinformation*. Center for American Progress. Retrieved from: <https://www.americanprogress.org/article/fighting-coronavirus-misinformation-disinformation/>

⁵⁵ Social media content takedowns: your stories. (2022). *ARTICLE 19*. Retrieved from: <https://www.article19.org/resources/social-media-content-takedowns-your-stories/>

⁵⁶ #MissingVoices (n.d). *ARTICLE 19*. Retrieved from: <https://www.article19.org/campaigns/missingvoices/>

⁵⁷ Ibid.

⁵⁸ Access Now, ACLU foundation of Northern California, ACLU Foundation of Southern California, ARTICLE 19, Brennan Center for Justice, Center for Democracy & Technology, Electronic Frontier Foundation, Global Partners Digital, InternetLab, National Coalition Against Censorship, New America’s Open Technology Institute, Ranking Digital Rights, Red en Defensa de los Derechos Digitales, & WITNESS. (2022) *The Santa Clara principles on transparency and accountability in content moderation*. Retrieved from: <https://santaclaraprinciples.org/>





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according to “leaked information” the death rate among people vaccinated by Pfizer was almost three times the death rate of AstraZeneca.⁵⁹ Instead of pushing Fazze’s agenda, some influencers went public and blew the whistle on the scam via Twitter.⁶⁰ This anecdotal case illustrates the big shift in whistleblowing through social media. Thanks to these whistleblowers “Fazze was...being shut down” and German and French authorities launched an investigation into the company.⁶¹

Conspiracy Theorists and the Misuse of Whistleblower Status

Dr. Carrie Madej, a conspiracy theorist who called the COVID-19 vaccine a witches’ brew, misappropriated the word whistleblower to describe her propaganda speech.

[Madej] currently lives in the Dominican Republic, she says, because it’s not safe for *whistleblowers* like her in the United States—her long-standing skepticism about vaccines, after all, is dangerous knowledge when elites are pushing coronavirus vaccinations for their own agenda.⁶² (emphasis added)

Misappropriation of the word whistleblower by conspiracy theorists is hardly a new phenomenon. The word whistleblower can be a safety net for those who stick their neck out for the public interest, although it can also bring unwanted stigma. It is important to have awareness of indications that the balance might be tilting in the direction of stigma.⁶³

Whistleblowers under attack

The report “*Unhealthy Silence: Development Banks’ Inaction on Retaliation during COVID-19*,” published on July 27, 2021 by the Coalition for Human Rights in Development, ARTICLE 19 and IFEX, documented that least 335 people suffered whistleblower reprisals, in a total of 35 countries that received or are receiving financial support from International Financial Institutions (IFI’s) for their COVID-19 response.⁶⁴ According to the report, as of June 15, 2021, IFIs earmarked \$150.54 billion to finance responses to COVID-19, through 1,332 projects.⁶⁵ As many as 233 of the people studied by the researchers were criminalized, arrested or imprisoned; 56 people suffered physical abuse or torture; at least 13

⁵⁹ Ibid.

⁶⁰ Haynes, C., & Carmichael, F. (2021). The YouTubers who blew the whistle on an anti-vax plot. *British Broadcasting Company*. Retrieved from: <https://www.bbc.com/news/blogs-trending-57928647>

⁶¹ Ibid.

⁶² Openshaw, Robyn. (2020) Dr. Carrie Madej tells you what’s in those shots [audio podcast]. The QAnon doctor pushing wild conspiracies about the covid vaccine. *Vice News*. Retrieved from: <https://www.vice.com/en/article/88avy5/a-qanon-doctor-who-spoke-at-the-capitol-riots-said-the-covid-vaccine-is-a-witches-brew>

⁶³ Donnelly, Helene. (2013, July 17). The stigma associated with raising concerns has to be removed. *The Guardian*. Retrieved from: <https://www.theguardian.com/healthcare-network/2013/jul/17/stigma-raising-concerns-removed-whistleblowing>

⁶⁴ Unhealthy silence (2022). *Coalition for Human Rights in Development*. Retrieved from: <https://rightsindevelopment.org/unhealthy-silence/>

⁶⁵ Ibid.





people, almost all health personnel, were dismissed; 17 people were threatened; and 6 people were killed.⁶⁶ As part of Government Accountability Project's ongoing research, a sample of 157 whistleblower retaliation cases around the world reveals that the most common retaliation types were firing (52) or arrests (32 arrested, 6 charged, and 6 questioned by police).

Case Studies

Case Study 1: U.S. Whistleblower Dr. Rick Bright

Beginning on March 19, 2020, then-U.S. President Donald Trump publicly championed the disinformation that hydroxychloroquine was a cure for the coronavirus.⁶⁷ Despite the lack of scientific evidence of the drug's effect on COVID patients, the former president made false and misleading statements through tweets and public White House briefings. Other members of the conservative Republican Party (GOP) as well as *Fox News* reporters proliferated the message by backing the President despite increasing concerns from the medical community.⁶⁸ On March 23, 2020, the Trump administration directed the U.S. Department of Health and Human Services (HHS) leadership to "drop everything and make the chloroquine donated by Bayer widely available to the American public."⁶⁹ The administration specifically insisted on a Nationwide Expanded Access Investigational New Drug (IND) protocol for chloroquine, which provides "significantly greater access to the drug" than an Emergency Use Authorization (EUA).⁷⁰ U.S. Food and Drug Administration (FDA) Chief Counsel Stacy Amin backed the administration's move, urging HHS officials to move forward on the IND protocol for chloroquine" to coincide with President Trump's forthcoming announcement of his Administration's partnership with Oracle."

On March 23, 2020, Dr. Rick Bright, then-Director of the Biomedical Advanced Research and Development Authority (BARDA), immediately expressed concerns with requesting IND protocol for hydroxychloroquine. Later that day, Dr. Bright emailed his direct superior, Dr. Robert Kadlec, and FDA Chief Counsel Stacy Amin, advising them to roll out a smaller pilot program "given the limited information we have on both the drug and the innovative data system."⁷¹ Afterward, Dr. Bright continued to urge his

⁶⁶ Ibid.

⁶⁷ Cathey, L. (2020, August 8). Timeline: tracking trump alongside scientific developments on hydroxychloroquine. *ABC News*. Retrieved from: <https://abcnews.go.com/Health/timeline-tracking-trump-alongside-scientific-developments-hydroxychloroquine/story?id=72170553>

⁶⁸ Blake, A. (2021, June 22). Fox News and Trump are still pushing hydroxychloroquine. Here's what the data actually shows. *The Washington Post*. Retrieved from: <https://www.washingtonpost.com/politics/2021/06/21/hydroxychloroquine-coronavirus-treatment-trump-allies-cant-quit/>

⁶⁹ Carter, Brandon. Rick Bright whistleblower complaint [pdf copy]. (2020). *National Public Radio [NPR]*. Retrieved from: <https://apps.npr.org/documents/document.html?id=6882560-Rick-Bright-Whistleblower-Complaint>

⁷⁰ Ibid.

⁷¹ Ibid.



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colleagues to secure an EUA for hydroxychloroquine rather than an IND protocol, and he clarified in his letter to the FDA that the EUA request “was not at his or BARDA’s behest.”⁷² On March 29th, the FDA issued an EUA for “certain patients when clinical trials are not feasible.” Even after the EUA was approved, the administration and members of the HHS continued to push for expanded access to hydroxychloroquine, with HHS Assistant Secretary for Health Brett Giroir instructing to “flood NY and NJ with treatment courses [of hydroxychloroquine].”⁷³ Dr. Bright’s warnings about the lack of information on hydroxychloroquine were consistently ignored as the administration attempted to increase access beyond the limits of the EUA.

In Dr. Bright’s whistleblower complaint, there are no dates provided as to exactly when Dr. Bright provided HHS emails to a journalist, however, he did so sometime between April 4, 2020, and April 17, 2020.⁷⁴ On April 17, 2020, Dr. Kadlec assigned Dr. Bright to a “special project focusing on diagnostics,” a vaccine development initiative between the National Institute of Health (NIH) and BARDA.⁷⁵ Dr. Bright continued to conduct BARDA operations, but on April 21, 2020, HHS released a media statement that Dr. Bright will “transfer the skills he has applied as Director of [BARDA] to the [NIH].”⁷⁶ The Trump Administration described Dr. Bright’s transfer as a “promotion” even though Dr. Bright was moved into a “narrower role at the NIH.”⁷⁷ On April 22, 2020, after being removed from his position, Dr. Bright released a statement claiming that the administration was retaliating against him for his efforts to properly vet COVID-19 treatments.⁷⁸ By May 5, 2020, Dr. Bright filed a whistleblower complaint with the U.S. Office of Special Counsel (OSC) and on May 14 he testified before Congress, detailing how “government leadership was rushing blindly into a potentially dangerous situation” by investing resources into hydroxychloroquine without scientific recommendation or FDA inspection.⁷⁹ Bright also criticized HHS leadership for their “slow response on N95 face masks” despite warnings from himself and other concerned officials.⁸⁰

Dr. Bright’s story reached many major publications and gained media traction for exposing the lack of integrity and transparency regarding the government’s COVID messaging. Several publications

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Wamsley, Laurel. (2020, May 5). Rick Bright, former top vaccine scientist, files whistleblower complaint. *National Public Radio [NPR]*. Retrieved from: <https://www.npr.org/sections/coronavirus-live-updates/2020/05/05/850960344/rick-bright-former-top-vaccine-scientist-files-whistleblower-complaint>

⁷⁵ Ibid.

⁷⁶ Florko, N. (2020, April 21). Director of U.S. agency key to vaccine development leaves role suddenly amid coronavirus pandemic. *Stat News*. Retrieved from: <https://www.statnews.com/2020/04/21/rick-bright-out-at-barda/>

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Abdutaleb, Y., McGinley, L. (2020, May 5). Ousted vaccine official alleges he was demoted for prioritizing ‘science and safety’. *The Washington Post*. Retrieved from: <https://www.washingtonpost.com/health/2020/05/05/rick-bright-hydroxychloroquine-whistleblower-complaint/>

⁸⁰ Ibid.





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reported on Dr. Bright after his statement on April 22nd, 2020, bringing attention to the administration's rash efforts to push hydroxychloroquine as a cure for COVID. On April 24th, 2020, the FDA issued a warning against the drug, stating that hydroxychloroquine should not be used outside of hospitals.⁸¹ This marked the FDA's first official statement on the drug since authorizing emergency use on March 28th, even though medical associations and research trials had raised concerns about the efficacy of the drug in between the two announcements. More studies on the effect of hydroxychloroquine on COVID patients continued to come out from the BMJ,⁸² RECOVERY,⁸³ and Columbia University⁸⁴ showing that hydroxychloroquine did not impact patient's likelihood of recovery. On June 15th, the FDA revoked the emergency use authorization for hydroxychloroquine because the drugs were "unlikely to be effective in treating COVID-19 for the authorized uses."⁸⁵ Dr. Bright's whistleblowing exposed misinformation at the highest levels of government, alerting the public that medical information needs to be backed up by scientific evidence before being trusted.

On October 6, 2020, Dr. Bright resigned from his position at the NIH, stating that he had received "no meaningful work" and was concerned about the increasing "cronyism" among federal health officials.⁸⁶ After coming forward about the administration's reckless promotion of hydroxychloroquine in May, Dr. Bright was "associated with disparaging comments and threats," with former President Trump calling Dr. Bright a "creep" and "disgruntled employee" on Twitter.⁸⁷ However, on November 9, 2020, Dr.

⁸¹ Center for Drug Evaluation and Research. (2022, January 12). FDA Drug Safety podcast on use of hydroxychloroquine or chloroquine [audio podcast]. U.S. Food and Drug Administration. Retrieved from: <https://www.fda.gov/drugs/fda-drug-safety-podcasts/fda-cautions-against-use-hydroxychloroquine-or-chloroquine-covid-19-outside-hospital-setting-or>

⁸² Tang, W., Cao, Z., Han, M., Wang, Z., Chen, J., Sun, W., Wu, Y., Xiao, W., Liu, S., Chen, E., Chen, W., Wang, X., Yang, J., Lin, J., Zhao, Q., Yan, Y., Xie, Z., Li, D., Yang, Y., ... Xie, Q. (2020). Hydroxychloroquine in patients with mainly mild to moderate coronavirus disease 2019: Open label, Randomised Controlled Trial. *BMJ*, m1849. doi: <https://doi.org/10.1136/bmj.m1849>

⁸³ No clinical benefit from use of hydroxychloroquine in hospitalised patients with covid-19. *RecoveryTrial*. (2020, June 5). Retrieved from: <https://www.recoverytrial.net/news/statement-from-the-chief-investigators-of-the-randomised-evaluation-of-covid-19-therapy-recovery-trial-on-hydroxychloroquine-5-june-2020-no-clinical-benefit-from-use-of-hydroxychloroquine-in-hospitalised-patients-with-covid-19>

⁸⁴ Geleris, J., Sun, Y., Platt, J., Zucker, J., Baldwin, M., Hripcsak, G., Labella, A., Manson, D. K., Kubin, C., Barr, R. G., Sobieszczyk, M. E., & Schluger, N. W. (2020). Observational study of hydroxychloroquine in hospitalized patients with covid-19. *New England Journal of Medicine*, 382(25), 2411–2418. <https://doi.org/10.1056/nejmoa2012410>

⁸⁵ FDA. (2020, June 15). Coronavirus (COVID-19) update: FDA revokes emergency use authorization for chloroquine and Hydroxychloroquine. *U.S. Food and Drug Administration*. Retrieved from: <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-revokes-emergency-use-authorization-chloroquine-and>

⁸⁶ Stolberg, S. G. (2020, October 6). Whistle-blowing scientist quits government with final broadside. *The New York Times*. Retrieved from: <https://www.nytimes.com/2020/10/06/us/politics/whistle-blower-rick-bright.html>

⁸⁷ Ibid.





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Bright's commitment to integrity did not go unnoticed by then-President-elect Joe Biden, who recruited Dr. Bright as a part of his coronavirus advisory board during his transition.⁸⁸ In March 2021, Dr. Bright chose to continue his work at the Rockefeller Foundation as Senior Vice President of Pandemic Prevention and Response.⁸⁹ On August 9, 2021, the OSC announced that Dr. Bright had reached a settlement with HHS.⁹⁰ According to his lawyer, Debra Katz, Dr. Bright was awarded backpay for his removal as well as damages for emotional distress and the cost of temporary housing necessitated by the whistleblower retaliation.⁹¹

In analyzing Dr. Bright's case, we see that he made a disclosure as a federal employee. He decided to use internal channels to express his concerns, then he used external channels in reporting to the OSC, and he also utilized public channels when he went to the media. The impact of his whistleblowing prevented the mainstream use of hydroxychloroquine as a cure for COVID-19. His decision to blow the whistle without confidentiality or anonymity made it difficult to prevent retaliation but having legal representation can help whistleblowers throughout the process and maximize the impact of one's disclosures while minimizing the potential backlash. Dr. Bright hired an experienced whistleblower attorney who skillfully guided him through the process. Although Dr. Bright faced public criticism from the administration, the Office of Special Counsel⁹² and Congress⁹³ backed him, and the news media, including 60 minutes, provided supportive coverage of his case – all resulting in strong public support.⁹⁴ It is noteworthy that Dr. Bright's complaint resulted in a settlement agreement that offered him relief and he was able to recover his career – which is the desired outcome but not the norm. Dr. Bright's case exemplifies the importance of protecting federal whistleblowers, as the messages at the top wield great

⁸⁸ Brander, E. Mucha, S. (2020, November 20) Biden transition team announces coronavirus advisers, including whistleblower Rick Bright. *CNN*. Retrieved from: <https://www.cnn.com/2020/11/09/politics/biden-coronavirus-advisers-experts-rick-bright/index.html>

⁸⁹ Foundation, A. T. R., & Contact, M. (2021, March 8). Dr. Rick bright joins the Rockefeller Foundation to lead Pandemic Prevention Institute Development. *The Rockefeller Foundation*. Retrieved from: <https://www.rockefellerfoundation.org/news/dr-rick-bright-joins-the-rockefeller-foundation-to-lead-pandemic-prevention-institute-development/>

⁹⁰ OSC Announces Settlement Agreement Between HHS and Former BARDA Director Dr. Rick Bright After his Reassignment. (2021, August 9). *U.S. Office of Special Counsel*. Retrieved from: <https://osc.gov/News/Pages/20-21-Settlement-Rick-Bright.aspx>

⁹¹ Stolberg, S. G. (2021, August 9). A U.S. scientist settled his federal whistle-blowing complaint over Covid treatments. *The New York Times*. Retrieved from: <https://www.nytimes.com/2021/08/09/us/politics/rick-bright-whistleblower.html>

⁹² OSC Announces Settlement Agreement Between HHS and Former BARDA Director Dr. Rick Bright After his Reassignment. (2021, August 9). *U.S. Office of Special Counsel*. Retrieved from: <https://osc.gov/News/Pages/20-21-Settlement-Rick-Bright.aspx>

⁹³ Fox, Lauren. (2020, April 23) House committee asks inspector general to probe Rick Bright ousting. *CNN*. Retrieved from: <https://www.cnn.com/2020/04/23/politics/democrat-reaction-rick-bright/index.html>

⁹⁴ Zubrow, Keith. (2020, May 14). BARDA whistleblower Rick Bright speaks out on 60 minutes. *CBS*. Retrieved from: <https://www.cbsnews.com/news/rick-bright-barda-whistleblower-hhs-60-minutes-2020-05-14/>





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power and influence over public behavior and if Presidents and their appointees are not checked with even greater strength than the cost, as in the COVID-19 context, could be human lives.

Case Study 2: British Medical Journal and Ventavia Research Group Whistleblower Brook Jackson

Brook Jackson

Ventavia Research Group is a privately owned clinical research company in Texas that was contracted by Pfizer to run a COVID vaccine trial that began on April 29, 2020.⁹⁵ The study was designed to be partially blind so that only the staff who prepared and administered the vaccines would know whether it was the Pfizer vaccine or a placebo.⁹⁶ The rest of the staff, the principal investigator, and the participants would be blind to the treatment that they were receiving.⁹⁷

Brook Jackson was hired as a regional director for Ventavia's trial sites in Texas in September 2020.⁹⁸ During her two weeks of employment, she noticed many issues with the trial and inadequate quality control to remedy the errors. Jackson recalled finding vaccine materials with participants' ID numbers left in the open and drug assignment printouts being left in participants charts, "potentially unblinding participants" and jeopardizing the study design.⁹⁹ There were also safety concerns: Jackson found needles disposed in plastic bags rather than container boxes, vaccines stored at improper temperatures, and lack of timely follow up with patients who had adverse reactions.¹⁰⁰ In late September, Jackson had a meeting with two other Ventavia directors and raised the issue of protocol violations and the lack of corrective action. According to one of the directors, Ventavia was unable to "quantify the types and numbers of errors" occurring during the trial," indicating poor quality control.¹⁰¹ On September 25, 2020, Brook Jackson called the FDA to alert them to the "unsound practices" at Ventavia's trial sites and further sent them an email listing all the issues and violations she had encountered in her time.¹⁰² Jackson was fired later that same day, with the letter from Ventavia claiming that she was "not a good fit" at the company.¹⁰³ The FDA responded to Jackson and discussed her report with her, but they did not pursue any further course of action.¹⁰⁴

⁹⁵ Study to describe the safety, tolerability, immunogenicity, and efficacy of RNA vaccine candidates against COVID-19 in healthy individuals. (2022, February). *U.S. National Library of Medicine*. Retrieved from: <https://clinicaltrials.gov/ct2/show/NCT04368728>

⁹⁶ Thacker, P. D. (2021, November 2). Covid-19: Researcher blows the whistle on data integrity issues in Pfizer's vaccine trial: Video 1. *BMJ*. doi: <https://doi.org/10.1136/bmj.n2635>

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.





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After being fired from Ventavia, Jackson reached out to the British Medical Journal (BMJ) to report the unsafe practices that occurred in the Pfizer vaccine trial.¹⁰⁵ In writing the article, BMJ also contacted several former Ventavia employees, who all provided similar accounts of the protocol at Ventavia.¹⁰⁶ One employee stated that “in several cases Ventavia lacked enough employees to swab all trial participants who reported covid-like symptoms,” which both endangered patients and damaged data integrity.¹⁰⁷ Without immediate COVID testing, participants who tested positive would not know if they were infected and the data would not accurately reflect infection rates.¹⁰⁸ Jackson’s whistleblowing was important for providing the public full transparency of the Pfizer vaccine trial. Internal documents from August 2020 revealed that Ventavia executives were aware of data entry issues and instances of staff members “falsifying data.”¹⁰⁹ Pfizer made no reference to the issues at the Ventavia site when they applied for emergency use authorization of their vaccine. On December 11, 2020, the FDA approved the vaccine.¹¹⁰ Without Jackson coming forward to the media, the issues may have remained within company documents.

Analysis

As an employee, Jackson utilized internal and external channels to report problems. She reported externally to the FDA after receiving no response or indication of action from her superiors, acting alone and without legal help. Once fired, she went to the British Medical Journal, which notably reported on the fraud behind Andrew Wakefield’s research and claims related to links between the measles, mumps, and rubella vaccine and autism.¹¹¹ The disclosure was a moment of pause for the race to produce a vaccine, which was of utmost importance for the public health and safety. Ventavia responded by retaliating against Jackson by firing her the same day she contacted the FDA. The impacts of Jackson’s whistleblowing are far-reaching, however, as the BMJ article was met with intense scrutiny and garnered much attention on social media.

British Medical Journal

On November 2, 2021, the BMJ published their article on the issues with Pfizer’s vaccine trial at Ventavia’s sites. Beginning November 10th, readers reported difficulties when sharing BMJ’s article on

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Pfizer and BioNTech to submit emergency use authorization request today to the U.S. FDA for COVID-19 vaccine [Press Release]. (2020, November 20) Retrieved from: <https://www.pfizer.com/news/press-release/press-release-detail/pfizer-and-biontech-submit-emergency-use-authorization>; Pfizer and BioNTech receive FDA Advisory Committee vote supporting potential first emergency use authorization for vaccine to combat COVID-19 in the U.S [Press Release]. (2020, December 12). Pfizer, Inc. Retrieved from: <https://www.pfizer.com/news/press-release/press-release-detail/pfizer-and-biontech-receive-fda-advisory-committee-vote>

¹¹¹ Deer, Brian. (2011, January 6). Secrets of the MMR vaccine how the case against the MMR vaccine was fixed. *The British Medical Journal*. doi: <https://doi.org/10.1136/bmj.c5347>





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Facebook, with some unable to share and others having “missing context” flags on their posts.¹¹² Lead Stories, a fact-checking company contracted by Facebook, reviewed the BMJ article and on November 10 it published a story questioning the integrity of the whistleblower and criticizing the BMJ for incomplete information.¹¹³ Kit Longley, Science Media Relations manager for Pfizer, reported to Lead Stories that Pfizer already received and reviewed an anonymous complaint about the Ventavia trial site and “did not identify any issues or concerns that would invalidate the data.”¹¹⁴ Lead Stories further received communication from an FDA spokesperson that the “...FDA has full confidence in the data that were used to support the Pfizer [vaccine]...”¹¹⁵

As a result of this fact checking, all posts sharing the BMJ article on Facebook were flagged with a “Missing Context” warning which states: “Independent fact-checkers say this information could mislead people.”¹¹⁶ However, the BMJ was unable to resolve the issue with Facebook directly, and instead engaged with Lead Stories through a series of articles.¹¹⁷ In their first response, published November 15th, the BMJ restated their confidence in Brook Jackson due to the substantial documentation she provided regarding her employment at Ventavia.¹¹⁸ Further, the BMJ highlighted the fact that Pfizer provided no answer as to whether data from Ventavia’s sites were included in the trial’s safety analysis. The BMJ also criticized the FDA for failing to inspect “any of Ventavia’s sites following Jackson’s report.”¹¹⁹ As poignantly stated in the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, “[w]here States systematically and simultaneously suppress other sources while promoting their own false narratives, they are denying individuals the right to seek and

¹¹² Komatis, K., & Green, D. (2022, January 25). Fact-checking, covid-19 misinformation, and the British Medical Journal. *Electronic Frontier Foundation*. Retrieved from: <https://www.eff.org/deeplinks/2022/01/fact-checking-covid-19-misinformation-and-british-medical-journal>

¹¹³ Miller, D. (2021, November 10). Fact check: The British Medical Journal did not reveal disqualifying and ignored reports of flaws in Pfizer covid-19 vaccine trials. *Lead Stories*. Retrieved from: <https://leadstories.com/hoax-alert/2021/11/fact-check-british-medical-journal-did-not-reveal-disqualifying-and-ignored-reports-of-flaws-in-pfizer-vaccine-trial.html>

¹¹⁴ Ibid. For information on the 20 best practices see: Devine, T. & Feinstein, S. (2021). Are whistleblowing laws working? a global study of whistleblower protection litigation. International Bar Association Legal Policy and Research Unit. Government Accountability Project. Retrieved from: <https://whistleblower.org/wp-content/uploads/2021/03/Are-Whistleblowing-laws-working-REPORT.pdf>

¹¹⁵ Ibid.

¹¹⁶ Berman, A., & Goldshlager, K. (2020, August 11). New ratings for fact-checking partners. *Meta, Inc*. Retrieved from: <https://www.facebook.com/journalismproject/programs/third-party-fact-checking/new-ratings>

¹¹⁷ K Komatis, K., & Green, D. (2022, January 25). Fact-checking, covid-19 misinformation, and the British Medical Journal. *Electronic Frontier Foundation*. Retrieved from: <https://www.eff.org/deeplinks/2022/01/fact-checking-covid-19-misinformation-and-british-medical-journal>

¹¹⁸ Tang, W., Cao, Z., Han, M., Wang, Z., Chen, J., Sun, W., Wu, Y., Xiao, W., Liu, S., Chen, E., Chen, W., Wang, X., Yang, J., Lin, J., Zhao, Q., Yan, Y., Xie, Z., Li, D., Yang, Y., ... Xie, Q. (2020). Hydroxychloroquine in patients with mainly mild to moderate coronavirus disease 2019: Open label, Randomised Controlled Trial. *BMJ*, m1849. <https://doi.org/10.1136/bmj.m1849>

¹¹⁹ Ibid.





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receive information under article 19 (2) of the International Covenant on Civil and Political Rights.”¹²⁰ On December 17th, 2021, editors of the BMJ published an open letter to Mark Zuckerberg contesting Lead Stories’ fact-checking, as stifling their “high quality,” peer-reviewed journalism.¹²¹ On December 18, Lead Stories countered by arguing that the Missing Context label was necessary given the “heavy traffic” and sensitive nature of the BMJ article.¹²² Lead Stories did what would violate best practices for investigating whistleblower disclosures, which was to question the motives of Jackson by going on a fishing expedition on social media.¹²³ On January 19, 2022, the BMJ released a final response again refuting Lead Stories’ claims and highlighting Facebook’s lack of action.¹²⁴ On January 27th, Lead Stories claimed that readers were sharing BMJ article as a call to stop vaccinations.¹²⁵

Analysis

Although media reporting is not often part of the legal definition of whistleblowing, this report defines the scope of whistleblowing broadly enough that what the media publishes could be whistleblower speech. Facebook and its contractor Lead Stories subjected BMJ’s to a type of gag-order and libel in retaliation for exercising its free speech, and this case study shows that due process was insufficient for it to defend itself.

The inextricably political nature of COVID-19 prevented the media from prioritizing scientific, evidence-backed information. In the case of the Ventavia whistleblower, BMJ properly vetted Jackson and her claims through documents and photos, and they also reached out to Pfizer and the FDA for comment.¹²⁶ Lead Stories provided less compelling evidence. Their defense for discrediting the BMJ’s

¹²⁰ Khan, I. (2021, April 13). Disinformation and freedom of opinion and expression. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan. Retrieved March 14, 2022, from documents-dds-ny.un.org website: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/085/64/PDF/G2108564.pdf?OpenElement>

¹²¹ Tang, W., Cao, Z., Han, M., Wang, Z., Chen, J., Sun, W., Wu, Y., Xiao, W., Liu, S., Chen, E., Chen, W., Wang, X., Yang, J., Lin, J., Zhao, Q., Yan, Y., Xie, Z., Li, D., Yang, Y., ... Xie, Q. (2020). Hydroxychloroquine in patients with mainly mild to moderate coronavirus disease 2019: Open label, Randomised Controlled Trial. *British Medical Journal*, m1849. doi: <https://doi.org/10.1136/bmj.m1849>

¹²² Miller, D. (2021, December 18). Lead stories' response to BMJ Open Letter Objecting to a lead stories fact check. *Lead Stories*. Retrieved from: <https://leadstories.com/analysis/2021/12/lead-stories-response-to-a-bmjcom-open-letter-objecting-to-a-lead-stories-fact-check.html>

¹²³ Ibid.

¹²⁴ Coombes, R., & Davies, M. (2022). Facebook versus the BMJ: When fact checking goes wrong. *BMJ*. <https://doi.org/10.1136/bmj.o95>

¹²⁵ Schenk, M. (2022, January 27). Context matters: Why lead stories fact checked the BMJ. *Lead Stories*. Retrieved from: <https://leadstories.com/analysis/2022/01/context-matters-why-lead-stories-fact-checked-the-bmj.html>

¹²⁶ Godlee, F., & Abbasi, K. (2021, November 2). Open letter from the BMJ to Mark Zuckerberg. *The BMJ*. doi: <https://doi.org/10.1136/bmj.n2635>





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reporting and Jackson's claims was that Pfizer and FDA were already "aware of the allegations" in 2020.¹²⁷ As BMJ pointed out, however, there failed to be any investigations or public reports on how the issues were rectified.¹²⁸ BMJ has every right to share their article without obstruction as it raises credible concerns. Although, the reality that the contents of BMJ's article were susceptible to being misinterpreted and misused by anti-vaxxers, as pointed out by Lead Stories in their "Context Matters" article, should be explored.¹²⁹

It is analogous that the most truthful and neutral factual reporting from long, technical, scientific reports are vulnerable to such exploitation by "cherry picking" certain facts to support what one wants to believe (confirmation bias). Such was the case of Spotify podcast host Joe Rogan's anti- vaccine guest Dr. Robert Malone. Dr. Jessica Malaty Rivera, a health misinformation whistleblower on Instagram, among others, exposed Dr. Malone's disinformation and conspiracies.¹³⁰ Based on a report by a doctor in Hong Kong on cases of myocarditis (inflammation of the heart muscle that can be mild or severe and is easily treatable) in children who received the vaccine,¹³¹ Malone cherry picked data and manipulated his reporting on the study. For instance, he claimed that 1 out of 2,700 boys were hospitalized post vaccine.¹³² It is correct that 1 in 2,700 boys had myocarditis, however all the cases were mild.¹³³ The children were only in the hospital for a detailed workup.¹³⁴ The myocarditis cases cleared up without medication or only required ibuprophen and there were no mortality cases.¹³⁵ Also, a higher percentage of children experienced myocarditis caused by COVID-19.¹³⁶ The vaccine, which helps prevent and reduce the severity

¹²⁷ Miller, D. (2021, November 10). Fact check: The British Medical Journal did not reveal disqualifying and ignored reports of flaws in Pfizer covid-19 vaccine trials. *Lead Stories*. Retrieved from: <https://leadstories.com/hoax-alert/2021/11/fact-check-british-medical-journal-did-not-reveal-disqualifying-and-ignored-reports-of-flaws-in-pfizer-vaccine-trial.html>

¹²⁸ Coombes, R., & Davies, M. (2022). Facebook versus the BMJ: When fact checking goes wrong. *The BMJ*. doi: <https://doi.org/10.1136/bmj.o95>

¹²⁹ Schenk, M. (2022, January 27). Context matters: Why lead stories fact checked the BMJ. *Lead Stories*. Retrieved from: <https://leadstories.com/analysis/2022/01/context-matters-why-lead-stories-fact-checked-the-bmj.html>

¹³⁰ Basen, R. (2022, February 23) Malone harassed doc who reported him to medical board; pain clinic fraud scheme. *Medpage Today*. Retrieved from: <https://www.medpagetoday.com/special-reports/exclusives/97323>

¹³¹ Chua, Gilbert T, et al. (2021) Epidemiology of Acute Myocarditis/Pericarditis in Hong Kong Adolescents Following Comirnaty Vaccination. *U.S. National Library of Medicine*. doi: <https://doi.org/10.1093/cid/ciab989>. Retrieved from: <https://archive.ph/Vh05z>

¹³² Joe Rogan Interview with Dr. Robert Malone [transcript and full interview by Joe Rogan]. (2022, January 3). *Covid-19 Information*. Retrieved from: <https://archive.ph/qbdMm>

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ And people generally. Stein, M.; ASHkenazi-Hoffnug, L.; Greenberg, D.; Dalal, I.; Livni, G.; Chapnick, G.; Stein-Zamir, CF.; Ashkenazi, S.; Hecht-Sagie, L.; & Grossman, Z. The burden of COVID-19 and its prevention by vaccination: a joint statement of the Israeli Pediatric Association and the Israeli Society for Pediatric Infection disease. *Vaccines* 2022, 10, 81. doi: <https://doi.org/10.3390/vacines10010081>





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of COVID-19, can arguably help prevent myocarditis, thus the benefits of the vaccine must be weighed against the risks. Moreover, anyone can take facts from any reliable journal or peer-reviewed scientific source and construe them in a way that supports the argument they want to make. The original source should not be silenced for that existing risk without much clearer parameters for how, and why such content must be restricted in some form or manner.

This case study highlighted the important role that social media played when it came to policing whistleblowers. Users immediately flagged BMJ's article, casting doubt on BMJ and Jackson's credibility and diminishing the article's online presence. BMJ was unable to appeal the decision effectively because of Facebook's third-party fact checking system. As such, the BMJ's only recourse was to respond to LeadStories through articles and open letters, creating a public log of back-and-forth rebuttals but failing to reach an actual solution between the two parties. Facebook's appeal process, or lack thereof, proved to be problematic as it hampered the whistleblowing process while providing no clear process for appeals. The two whistleblower cases impacted disinformation by bringing public attention both to the quality issues at Ventavia sites that the FDA and Ventavia should have thoroughly investigated rather than spending their time investigating the whistleblower, and the federal and corporate responses to try to prevent that information from being shared widely – the same federal agency and companies whose missions are to counter disinformation and to protect legitimate whistleblower speech.

Case Study 3: U.K. Confidential Public Procurement Whistleblower

On March 18, 2020, the U.K. Cabinet Office issued guidance on public procurement regulations in response to COVID-19, stating that “public bodies are permitted to procure goods, services, and works with extreme urgency under regulation.”¹³⁷ The policy note allowed public bodies to bypass the usual open competition practices and award contracts “without robust justification” in cases of emergency. Even under the emergency protocol, there are still checks in place, as agencies must strive to award contracts on grounds of “extreme urgency” or “an accelerated timetable.”¹³⁸ From March 18, 2020, to July 31, 2020, the U.K. government awarded over 8,600 contracts related to pandemic prevention with a value of around 18 billion pounds.¹³⁹ Of these, contracts awarded to personal protective equipment (PPE) suppliers and distributors accounted for around 12.3 billion pounds, or eighty percent of the money.¹⁴⁰ On November 26, 2020, the National Audit Office (NAO) released an “Investigation into Government Procurement during the COVID-19 Pandemic,” studying how the government chose to allocate resources to acquire high volumes of PPE from March 2020 to July 2020. After the March 2020 guidance on

¹³⁷ UK Cabinet Office public procurement policy. (2020, March 18). *Concurrences Antitrust Publications & Events*. Retrieved from: <https://www.concurrences.com/en/bulletin/news-issues/march-2020/the-uk-cabinet-office-publishes-a-procurement-policy-note-in-response-to-the>

¹³⁸ Ibid.

¹³⁹ Investigation into government procurement during the COVID-19 pandemic. (2020, November 26). *National Audit Office*. Retrieved from: <https://www.nao.org.uk/report/government-procurement-during-the-covid-19-pandemic/>

¹⁴⁰ Ibid.





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procurement regulations, ministers, Members of Parliament, members of the House of Lords, and health professionals teamed up to establish a “high priority lane” for PPE suppliers.¹⁴¹ The high-priority lane consisted of leads that were “more credible or needed to be treated with more urgency,” and NAO found that suppliers in the high-priority lane were ten times as likely to obtain a contract as those in the normal lane.¹⁴²

In conducting their investigation, NAO spoke to “key individuals” from government and health agencies to determine the integrity of the procurement process. NAO noted issues with record keeping in some of the contracts and possible conflicts of interest. For example, in April 2020, the Department of Health and Social Care (DHSC) contracted with PestFix, a PPE supplier, for 59 million pounds. PestFix’s masks were not in line with the U.K. government’s specifications, however the DHSC only became aware of this issue after PestFix delivered 600,000 of the masks.¹⁴³ Company due diligence was not carried out until June, when the DHSC published a correct document on July 10, 2020, awarding PestFix 32 million pounds.¹⁴⁴ In another case, on April 29, 2020, the DHSC contracted with Ayanda Capital for 155 million pounds for face masks.¹⁴⁵ After receiving the masks, the DHSC recognized that the masks were not in line with government specifications and were “to be used for other purposes or resold.”¹⁴⁶ Furthermore, due diligence checks carried out on May 2, 2020, declared no conflicts of interest.¹⁴⁷ However, NAO’s review of the contract found that the Ayanda Capital proposal came from Andrew Mills, who was a high-ranking member of the Department for International Trade (DIT) as well as a senior Adviser at Ayanda Capital.¹⁴⁸ This creates a clear conflict of interest, as Mills had connections to the government and was simultaneously awarded a high-priority contract after recommendations from government officials. Furthermore, a leaked email dated May 6 reveals that the DHSC was aware of the conflict of interest but was hoping to cover it up by “sign[ing] off urgently” on the payments to Ayanda capital before the “planned press release from the DIT.”¹⁴⁹

The errors and corruption present in the procurement system are concerning on their own, however, the U.K. government’s failure to report on these issues in a timely manner constitutes disinformation. The Good Law Project reported that the U.K. government ended up paying a total of 169 million pounds to PestFix and 145 million pounds to Ayanda for PPE that is “not currently available for release to the National Health Service due to technical and quality issues.”¹⁵⁰

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ <https://www.theyworkforyou.com/wrans/?id=2022-01-13.103559.h&s=%22pestfix%22#g103559.q0>





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Along with NAO's report on the U.K. Government's improper procurement methods, the Good Law Project and EveryDoctor brought forth a challenge to High Court regarding the "VIP lane" of PPE procurement. On January 12, 2022, the High Court ruled that the high priority contracts awarded by government officials was unlawful for being "in breach of the obligation of equal treatment."¹⁵¹

In this case, the emails "leaked" to NAO and the Good Law Project were crucial in exposing the U.K. Government's involvement in awarding corrupt contracts and withholding information from the public. The emails reveal correspondences between top officials at the Cabinet Office and the DHSC scrambling to manipulate data after the NAO report was released, so that the data on the VIP lane awards "matched what was given to the NAO."¹⁵² Evidence of correspondence at that high level likely came from an employee within the DHSC or the Cabinet Office. The sources of the so-called "leak," went to independent organizations like the Good Law Project and NAO, likely for the purpose of bringing light to the PPE procurement fraud. The whistleblowers remain unnamed, so the impact on these individuals is unknown, however the emails provided evidence of government deceit.

Analysis

This case exemplifies how in times of crisis, the lack of integration of checks in policy decisions, creates space for rampant corruption and fraud. Heads of state in the U.K. government were complicit in withholding details from public records and failing to report on issues as they occurred, keeping the public in the dark about the supply of PPE. By withholding information and allowing ineffective and costly PPE procurement practices to continue, the government's disinformation arguably violated public trust in government, created a danger to public health and safety, and was a gross waste of public funds. Considering the high-level officials involved, the whistleblowers who provided evidence did so anonymously, and chose to reveal the emails to Good Law Project, a non-profit public interest organization, whose investigation and strategic litigation helped expose the government's disinformation.

Case Study 4: France Confidential Health Diagnostics and Systems Whistleblower, Dedalus

Dedalus is a France-based company and the leading provider in Europe and UK of health and diagnostics software solutions to healthcare institutions in areas of patient files, technical platforms, and billing.¹⁵³ It publicly boasts that it complies with law and regulations related to cyber security and that its data privacy protections are concrete and cutting edge.¹⁵⁴ April 2018, the whistleblower, whose identity

¹⁵¹ Collis, Helen. High court finds UK's VIP lane for PPE contracts 'unlawful'. (2022, January 12). *Politico*. Retrieved from: <https://www.politico.eu/article/high-court-uk-vip-lane-ppe-contract-unlawful/>

¹⁵² NEW: leaked emails reveal government officials manipulated VIP lane data after NAO investigation. *Good Law Project*. Retrieved from: <https://goodlawproject.org/news/leak-government-hid-vip-data/>

¹⁵³ Dedalus (n.d). Tous les acteurs de l'écosystème de la santé sont accompagnés pour obtenir les meilleurs résultats possibles. Retrieved from: <https://www.dedalus.com/fr/fr/a-propos-de-nous/entreprise/>

¹⁵⁴ Dedalus (n.d). Safety, security, health and environmental protection are important and enduring issues in a changing world. Retrieved from: <https://www.dedalus.com/global/en/security/>





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is unknown, joined Dedalus as a developer.¹⁵⁵ He detected more than a hundred security flaws in software sold to laboratories and other health establishments such that an average hacker could obtain medical analysis reports for Covid-19.¹⁵⁶ As many as 1,400 customer email addresses were accessible on the internet without a password.¹⁵⁷ He reported the problems internally.¹⁵⁸ By the end of 2019 the whistleblower estimated he carried out 142 “cybersecurity actions and reports.”¹⁵⁹ His supervisor wanted to restrict his work to only what was defined in his contract. His relationship with his employer started to chill. His boss criticized him for the long breaks he took to donate blood. In February 2020, he found new poorly protected servers and reported the problem internally again without any response. He finally went to the Chief Executive Officer (CEO) with the 78 security flaws. In response the CEO postponed the discussion and told him to stay in his place and respect the hierarchy and that his proactive approach did not fit well with the company’s methodology.

On March 25, 2020, after his internal disclosures were ignored and he learned a threat he identified resulted in the cyberhack of a Dedalus client, he finally went externally to the Ministry of Health, which said they would protect his anonymity.¹⁶⁰ During the Ministry’s investigation they revealed to Dedalus the list of flaws affecting customers reported by the whistleblower, which allowed them to identify the whistleblower as the source.¹⁶¹ In retaliation, Dedalus dismissed him for serious misconduct for hiding weaknesses of their security system.¹⁶² He contested the decision with the industrial tribunal.¹⁶³ The Ministry of Health’s investigation confirmed they could access Dedalus’s open intranet and recover the private key to access the servers in different laboratories.¹⁶⁴ The whistleblower received legal support from the whistleblower protection organization La Maison Des Lanceurs d’Alerte and filed an unfair dismissal for reporting a security breach in the public interest.¹⁶⁵ Dedalus denied that the decision to terminate the whistleblower was retaliation and claimed they are providing the best solutions in health

¹⁵⁵ Krempp, Guillaume. (2020, October 22). A Strasbourg, Dedalus licencie un lanceur d’alerte sur la protection de donees de sante. *Rue89 Strasbourg*. Retrieved from: <https://www.rue89strasbourg.com/strasbourg-dedalus-licencie-lanceur-alerte-protection-donnees-sante-192312>

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Manach, Jean-Marc. (2020, October 2). A “European leader” in health data dismisses a whistleblower for “serious misconduct”. (Trans.). *Next Impact*. Retrieved from: <https://www.nextinpact.com.translate.goog/article/43405/un-leader-europeen-donnees-sante-licencie-lanceur-dalerte-pour-faute-grave? x tr sl=fr& x tr tl=en& x tr hl=en& x tr pto=wapp>

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.





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and meet the various regulatory standards.¹⁶⁶ In October 2020, the whistleblower participated in media interviews but maintained the confidentiality of his identity.¹⁶⁷

Analysis

In analyzing this case study, the whistleblower was an employee who chose to raise concerns internally first, before deciding to make an external disclosure to the Ministry of Health where he requested anonymity, and later to the media where his identity was kept confidential. The whistleblower tried multiple times to alert his employer to the issue, but Dedalus was not responsive. It is interesting to note here that the Ministry of Health's investigation did not protect the whistleblower's anonymity well because it revealed his identifying information – which is any information that could allow someone to know the identity of the person without revealing the name (identity) of the person. Dedalus figured out who the whistleblower was and fired him. Dedalus's cyber security practices left hospitals, medical centers, and patients around the world vulnerable to cyber-attacks and privacy violations and it knew for years about the vulnerabilities. Meanwhile, the company expanded and made public claims that their systems were secure and compliant with regulations. Thanks to the whistleblower, Dedalus was forced to address the cyber security threats identified by the Ministry of Health.

Findings

Our research findings are:

- Whistleblowers were an important tool for countering disinformation during the pandemic and made a difference;
- Whistleblowers and whistleblowing speech was suppressed in various ways, from gag-orders, to threats of or actual acts of retaliation;
- Despite the risks, external channels for whistleblowing were highly utilized, as well as social, digital, and print news media. However, most workers reported internally first before going outside their employer;
- There was an increase in whistleblowing and the utilization of anonymity or confidentiality during the pandemic, likely because people fear retaliation; and
- There are insufficient national laws in terms of quantity and scope of protection for whistleblowers.

¹⁶⁶ Ibid.

¹⁶⁷ Manach, Jean-Marc. (2020, October 2). A "European leader" in health data dismisses a whistleblower for "serious misconduct". (Trans.). *Next Impact*. Retrieved from: <https://www.nextinpact.com.translate.google.com/article/43405/un-leader-europeen-donnees-sante-licencie-lanceur-dalerte-pour-faute-grave? x tr sl=fr& x tr tl=en& x tr hl=en& x tr pto=wapp>; see also: Krempp, Guillaume. (2020, October 22). In Strasbourg, Dedalus dismisses a whistleblower on the protection of health data. *Rue89 Strasbourg*. Retrieved from: <https://bit.ly/3KILtDD>





Recommendations

Governments should work closely with whistleblower law experts to draft and pass whistleblower laws that comply with international best practices. Those laws should include the following protections:

- Protection against criminal and civil liability SLAPP suits;
- An inclusive scope of covered whistleblowers (that extends to any legal or natural person) and whistleblower speech;
- An inclusive scope of protected reporting channels, including public channels;
- Whistleblower rights exemptions from non-disclosure forms and agreements or other written or verbal gag-orders;
- Temporary/injunctive relief in all whistleblower laws and channels;
- The right to access to a *de novo* jury trial in court – either after administrative exhaustion, 180 days without a response, or direct access to court; and
- Remedies that, at a minimum, make whistleblowers whole.

In addition, corporations have a strong part to play in having good policies and practices for handling whistleblower disclosures. Businesses should ensure they have whistleblower protection policies in place and safe reporting channels that are free of conflicts of interest.

Conclusion

Whistleblowers play an important role in countering disinformation. In April 2020, Sylvain Wasserman, rapporteur of the Parliamentary Assembly of the Council of Europe (PACE), said “[w]histleblowers can also help to prevent or correct state failures during the current crisis. They are therefore an essential cog in the wheel of our democracies, and their protection is a measure of how democratic we are.”¹⁶⁸ This report recommends that governments prioritize advancing strong legal protections for whistleblowers, and that corporations prioritize developing internal policies and procedures for handling internal disclosures.

¹⁶⁸ COVID-19: ‘It is vital we improve the protection of whistle-blowers both during and after the coronavirus crisis,’ says PACE rapporteur. (2020). *Parliamentary Assembly*. Retrieved from: <https://pace.coe.int/en/news/7847/covid-19-it-is-vital-we-improve-the-protection-of-whistle-blowers-both-during-and-after-the-coronavirus-crisis-says-pace-rapporteur>



Whistling at the Fake

The Crucial Role of Whistleblowers in Countering Disinformation

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"Whistling at the Fake: The Crucial Role of Whistleblowers in Countering Disinformation" is an international research project funded by the NATO's Public Diplomacy Division.

The project enjoys the participation of renowned experts and academics from several universities including Boston College, Manchester Metropolitan University, University of Tilburg, and the University of Padova.

By exploring the means and mode of spread of mal/mis/disinformation, and how this affects individuals' perceptions and decision-making ability, the project aims at increasing knowledge, awareness, and understanding amongst citizens on methods of identifying false information, and providing a set of practical suggestions individuals may be able to use when countering disinformation, propaganda, and other hostile information activities more broadly. Furthermore, the project considers the role and effectiveness of whistleblowers and knowledgeable insiders as a means of exposing hostile information activities and increasing public resilience to acts of this nature.

