Arizona Countering Disinformation Task Force

DRAFT Intro and Background for stakeholder review

Due to Chair 9/8/2020

[anash@courts.az.gov](mailto:anash@courts.az.gov)

EXECUTIVE SUMMARY

**Creation and Purpose of Task Force**

Arizona Supreme Court Chief Justice Robert Brutinel’s strategic agenda for Arizona courts, *Justice for the Future, Planning for Excellence*, includes a focus on promoting public trust and confidence in courts and awareness of the role that courts serve in our society. Arizona courts’ leadership recognizes that there are people, organizations, and foreign entities that intentionally instigate or seed disinformation on social media platforms and through bots and artificial intelligence to undermine public confidence in this country’s institutions, including courts. It seems that each day includes a headline revealing the use of disinformation to sow the seeds of skepticism or distrust in American democracy, and there is every indication that these efforts will continue and that tracing their origins will become more difficult.

The National Center for State Courts and national security professionals have drawn attention to this threat. Arizona’s courts must be prepared to address these attempts, whether foreign or domestic. The American public benefits when individuals discuss and debate legitimate issues and suffers when outside influences manufacture or amplify controversy in an effort to weaken the U.S. system of justice. Tactics like these not only pose a threat to the judiciary, they pose a threat to Democracy itself.[[1]](#footnote-0)

To address these issues in Arizona, on September 18, 2019, Chief Justice Brutinel issued Administrative Order No. 2019-114[[2]](#footnote-1) (“AO 2019-114”), establishing the Task Force on Countering Disinformation (“Task Force”). Chief Justice Brutinel ordered that the Task Force may:

1. Review examples of disinformation and misleading campaigns targeting the U.S. and Arizona justice systems;
2. Consider the need for local and national responses and information sharing related to disinformation and ways to communicate accurate information;
3. Consider a centralized point of contact to assist in identifying disinformation and having it removed while respecting individual opinions and First Amendment rights;
4. Consider state or local legislation that would require foreign agents to identify their content to the public;
5. Propose approaches to public education and communication that accurately reflect the roles and processes of courts;
6. Suggest technology and resources that can identify disinformation campaigns early enough to counter them with accurate information;
7. Identify public and private individuals and organizations that could share information to identify disinformation and respond with accurate information.

AO 2019-114 further directed the Task Force to submit a report and recommendations to the Arizona Judicial Council (“AJC”) by October 1, 2020, offering options to help ensure that accurate, verifiable facts and information remain available to the public. This is that Report and Recommendations.

**The Task Force Process**

Task Force members were selected from the public and private sectors for their experience in communications, academia, research, technology, law practice, community outreach, media relations, training and education, international relations, security protocols, and administration of the trial courts, where the public most directly interacts with Arizona’s courts.

With one exception, the Task Force met monthly from October 2019 through September 2020, discussing the directives outlined by AO 2019-114. The exception was in April of 2020 when the public and private sectors were committed almost exclusively to adapting their operations in response to the coronavirus pandemic. Workgroups within the Task Force began to hold meetings by conference call, and starting in May of 2020, Task Force meetings transitioned to virtual meetings and continued that approach throughout the duration of the Task Force’s work.

The Task Force was originally divided into several workgroups, each assigned one or more of the directives in AO 2019-114. Workgroups met in breakout sessions scheduled at the discretion of the workgroup leaders, periodically inviting subject matter experts to give presentations and to suggest approaches on various topics. Workgroup 1 consistently worked toward creating, administering, and analyzing a disinformation survey of judges and other court professionals in Arizona. As the Task Force narrowed its recommendations toward education and outreach, the remaining workgroups consolidated over time into a single Workgroup 2.

Each Task Force meeting included presentations by the workgroups and questions from and feedback by all Task Force members about workgroup efforts. Task Force meetings were attended by the public and stakeholders who contributed comments on the workgroup recommendations. This approach incorporated different perspectives, addressed overlap among workgroups, and enabled the development of meaningful final recommendations.

Three overlapping events with global implications took place during the Task Force’s work: The coronavirus pandemic, the lead-up to the 2020 U.S. presidential election, and the racial justice movement spurred by the death of George Floyd. The occurrences of misinformation and disinformation revolving around these events appear to have grown exponentially, and discussions of misinformation and disinformation in public discourse increased as well, as evidenced by social media giants like Facebook[[3]](#footnote-2) and Twitter[[4]](#footnote-3) deploying account restrictions and notifications based on sources and content they reviewed from posts by account holders. How these events provided context for the Task Force’s work and the misinformation and disinformation surrounding them, appears in the background section later in this report.

The Task Force received presentations on examples of foreign and domestic disinformation campaigns; how they are likely to adapt and morph over time, how to track and trace them, and how courts and individuals in the justice system can prepare for and respond to them. The Task Force heard from speakers about the employee and judicial codes of conduct and what they prohibit, require, and encourage as courts respond to disinformation through public education and outreach. In addition, the Task Force heard from experts in court administration, social media “listening” and campaign tracking technology, legal and traditional educational curriculum, national and local security, court responses to disinformation campaigns, media and mass communication trends, and national trends in state courts.

Information about local and national experiences with, and responses to, misinformation and disinformation were a regular part of the discussion at workgroup and Task Force meetings. At the same time, members of the public who attended Task Force meetings commented on the need for the Task Force to recognize First Amendment rights and to leave space for robust debate and criticism of the government’s actions. The Task Force wholeheartedly endorsed this goal.

Indeed, the ideals of free speech, open courts, and criticism and debate, in addition to transparency and accountability, appear in the first paragraph of AO 2019-114 that established the Task Force. This report and recommendations seeks to promote free speech, the right for redress of grievances, and the ability to voice sincerely held differences of opinion, while acknowledging that groups exist whose intent is to monopolize and degrade the debate for their own purposes of reducing trust and confidence in courts and the judicial system.

The Task Force notes that some members of the public complain that courts act in secret or take steps to exclude the public from court proceedings. It is important to acknowledge that some court proceedings, portions of proceedings, or court records are made nonpublic by rule, statute, or order and that those directives vary state-to-state and sometimes case-by-case. The Task Force acknowledges that some groups and individuals do not agree that certain case types, proceedings, and records must be closed to the public. In Arizona, these case types include adoptions, juvenile dependency matters, mental health cases, certain guardianship matters, and others. The policies, rules, and statutes requiring closure are clear, policy-based, and publicly available, but they are often not familiar to court-monitoring groups or the general public.

The Task Force notes that closed proceedings and records are the exception, not the rule. Arizona’s constitution directs that court proceedings are presumptively open. Likewise, Arizona’s supreme court rules state that court records are presumptively open, with statutes and rules providing most of the exceptions (individual court orders being the other). This structure of public and nonpublic access is modified with changes in rule, law, and procedure over time and as required in individual cases. When judicial officers and court staff apply these requirements to individual cases, it should not be characterized by the public as the actions of an indifferent or uncaring person, but as individuals following the law. Moreover, even in matters or records that are defined as nonpublic, Arizona and other jurisdictions allow arguments to the court for exceptions that would allow access.

The Task Force approved an incomplete draft report and recommendations at its August 2020 meeting to allow the report to be circulated for review and comment. The draft was sent to representatives from the following stakeholder groups for review and feedback: [Update the following to reflect actions taken] The National Center for State Courts; the Arizona Court of Appeals; Co-chairs of the Court’s Commission on Access to Justice; the Arizona Association of Superior Court Administrators; the Arizona Association of Superior Court Clerks; the Committee on Limited Jurisdiction Courts; the Arizona Bar Foundation; Arizona State University’s Cronkite School of Journalism and Mass Communication, News Co/Lab; [following are pending if time and contacts allow]: the (Phoenix, Tucson or both) Chapter of the American Board of Trial Advocates (ABOTA); the American Bar Association (Communications Law and Judicial Division sections). At its final meeting in September 2020, the Task Force discussed and approved what would become this final report and recommendations.

**Abbreviated Recommendations** [update these to match the phrasing and order of the final recommendations]

1. Modify the Arizona Code of Judicial Conduct to specifically address personal attacks against judges.
2. Redesign the *Our Courts Arizona* (OCA) interactive civics program and nominate a court representative to Arizona’s K-12 statewide educational program committee:
3. That the Arizona Administrative Office of the Courts empanel a “redesign team” to redesign the structure of OCA and develop ways to best leverage OCA to provide support and assistance to the many organizations that offer civics education resources throughout the state. It is recommended that the “redesign team” be comprised of approximately five or seven members and that it be a diverse representation of the Judicial Branch. The redesign team should develop and implement a structured, standing OCA committee, with the mission of collaborating with other agencies that offer similar educational opportunities and include a method to track and efficiently coordinate the actions of OCA (e.g., speaking engagements, Mock Trial assistance, presentations, etc.);
4. That the redesigned OCA nominate a liaison to the Arizona Council for Social Studies and the Arizona Department of Education’s Civic Education Community Engagement Program or any other body whose mission fits with the mission of OCA; and
5. That OCA coordinate with K-12 schools, universities, community groups, and other youth and adult programs to present information about courts, the judicial branch, and how media literacy protects democracy.
6. Establish in-person and web-based court contacts and outreach to help the public and the media understand the role of the court and the function of the judicial branch, and to help counteract and respond to disinformation at the local level:
7. Designate a person or people to serve the function of a Public Information Officer (PIO) who will be the liaison between an individual court and its judicial officers, court employees, local justice partners, the media, and the public;
8. Establish and maintain a court-specific website or webpage to provide accurate information and access to justice 24 hours a day, 7 days a week through local and statewide resources;
9. Establish and maintain at least one social media account (e.g., Facebook, Twitter, Instagram, YouTube) to keep the public and media informed about court events; to notify the community quickly and efficiently in emergencies; and as a tool to timely counteract disinformation, to provide accurate information, and to help the public better understand court policy and procedural issues connected to court-specific events; and
10. Conduct court-led learning events for the media.
11. Establish a “Rapid Response Team” to address situations where disinformation targeting a judicial branch individual, a court, or a court system occurs. Additionally, a comment to the Arizona Code of Judicial Conduct Rule 2.10 should be published to provide guidance as to how and when such instances should be addressed.
12. Establish a Local/National Disinformation Study Network for further analysis.
13. Establish a national, centralized point of contact to assist in identifying disinformation and having it flagged or, if warranted, removed while respecting individual opinions and First Amendment rights.
14. [placeholder] That courts take advantage of available technology and resources that can identify disinformation campaigns early enough to counter them with accurate information (recomm will name or list specifics or examples or categories and that courts obtain opt-in contact information that courts can use as a distribution list for correcting disinformation)
15. Track and report those in Arizona who are registered as foreign agents under the Foreign Agents Registration Act (FARA), 22 USCA § 611, et. seq. The Administrative Office of the Courts should approach an Arizona Executive Branch agency to secure a commitment that they compile publicly-available registration information from the United States Department of Justice (USDOJ) and publish Arizona-related information to the state agency’s website.
16. Engage in educational and strategic communication outreach programs and more extensive academic review of disinformation campaigns targeting courts and the court system,[[5]](#footnote-4) including a disinformation survey of the public.

**REPORT AND RECOMMENDATIONS**

1. **Background**

In May 2019, the National Center for State Courts hosted an invitation-only presentation to representatives from several court systems around the United States. The attendees, including David K. Byers, Director of the Arizona Administrative Office of the Courts (“AOC”), heard from the Center for Strategic and International Studies (CSIS) regarding examples of foreign influence in the 2016 presidential election. The presentation referenced the potential for disinformation attacks against courts as part of a larger campaign to create distrust and lack of trust in democracy and in the U.S. government in general.

Director Byers returned to Arizona, updated Arizona Supreme Court Chief Justice Robert Brutinel on the presentation and recommended that the AOC further review the potential for organized campaigns against the trust and credibility of Arizona’s courts. Chief Justice Brutinel established Arizona’s Countering Disinformation Task Force by Administrative Order in September 2019. Arizona is believed to be the first state court system in the nation to address the issue.

From the Task Force’s first meeting in October 2019 through March of 2020, the Task Force proceeded along a customary schedule of all-member meetings and workgroup sessions. As a first-of-its-kind team, the Task Force was perceived by some as an oddity but became recognized as a necessary step in preparing for and responding to disinformation campaigns targeting the judicial branch. Disinformation campaigns and the courts’ and public’s awareness of them grew exponentially during the Task Force’s term.

Between March 2020 and the Task Force’s last meeting in September 2020, the Task Force’s work was conducted during the coronavirus pandemic. In May 2020, the death of George Floyd while in the custody of Minneapolis police officers sparked national and global protests calling for, among other things, equal justice and the elimination of racial bias in government institutions.[[6]](#footnote-5) Additionally, the 2020 presidential election began to dominate the news cycles. The protests, participants, and resulting images from these events were prime opportunities for misinformation, disinformation, and foreign influence.[[7]](#footnote-6)

As the Task Force’s work converged with local and national elections in the Fall of 2020, more public attention focused on social media platforms regulating speech, the evidence and impact of foreign influence on social media, and the opportunities for interested groups, both foreign and domestic, to promulgate messages intended to reduce trust and confidence in American values and institutions.

These events overlapped and continued for months. In some ways, this confluence of events provided the Task Force opportunities to consider its work and prepare its responses in a highly relevant context. Without question, the American court system performs a vital adjudicatory and final decision-making function for the American public, which necessarily includes politically-charged and emotional issues. Moreover, the impending escalation of the attack on the judiciary poses grave consequences if gone unchecked. In the fragile balance of our democracy, it is the judiciary that ensures and protects the rule of law. It is the judicial branch that “make(s) sure that the delicate dance being performed between the people’s representatives (Legislative Branch) and their leader (President, or local Chief Executive) would not interfere with the smooth running of the country or – more importantly, perhaps – violate the Constitution. The party ultimately responsible for maintaining the government’s checks and balances, assuring that none of the branches abuses its authority, is the Supreme Court.”[[8]](#footnote-7) The integrity, independence, and confidence in the judicial branch is critical not only to Arizona or the United States of America, it is critical to democracies worldwide.

In July 2020, the need to address mistrust of courts as a public safety measure became clear, as a lawyer expected of harboring grievances against a federal judge took the life of the judge’s son in what appeared to be a home invasion aimed at revenge against the judge for her rulings. The very real concern is for the violence that occurs when individuals fixated on hatred of judges cross the line of protest and complaint and resort to acts of violence or murder.[[9]](#footnote-8)

In some instances, the Task Force either did not make a recommendation or recommended taking no action on a directive in AO 2019-114. For example, the Task Force reached consensus early in its work that individual courts and state court systems would not have the resources or desire to fight every campaign or to respond to every negative statement. It believes a better approach would focus on helping the public recognize disinformation and, equally important, restoring public confidence in a just society, where due process is consistently enforced and access to justice for all is a reality.

The Task Force asserts that our court system must work tirelessly to assure our courts remain the model for the world, to recognize that our courts are not perfect, that the law is constantly evolving, and thus our justice system must be constantly renewed and repaired. To achieve this, in part, we need honest, dedicated critics and monitors of court proceedings. However, we must also oppose malicious campaigns, foreign and domestic, intended to weaken our country through defaming courts as a co-equal branch of government. Considering the current inadequacy of civics education and understanding, the Task Force asserts that proactive measures are necessary to achieve this goal of protecting the rule of law.

The Task Force’s preference, and the foundation for all the recommendations in this report, is one of ongoing education and community outreach. The Task Force believes that government is made of individuals, and that individuals who work in government, such as judges and judicial branch staff, can more effectively reach and engage their neighbors than can statements from unnamed, unknown entities or foreign actors.

The Task Force believes that civics education--identifying the courts as the source of accurate information about court processes and procedures--can be the grassroots foundation for restoring and promoting understanding of the courts, for improving the trust and confidence in their performance, and for emphasizing the courts’ place within American culture and society. Partnerships with K-12 schools, higher education, family and adult-focused community clubs and organizations, chambers of commerce, and with the traditional media and new media outlets are steps toward this critical goal. A well-informed electorate is a prerequisite for democracy; reinvigorating civics education prepares our future leaders for their roles and will be of immeasurable value in reaching that objective.

What follows are the Task Force recommendations to Arizona’s Judicial Council. Some of the recommendations can be implemented by any local court at any time, such as establishing a website or social media presence that the media and the public can turn to for the latest, accurate information. Other recommendations will require multi-state partnerships with years-long follow-up, analysis, assessment, and modifications. The Task Force recognizes that courts may need to reallocate or secure additional resources to implement some of the recommendations presented here.

The Task Force views this Report and Recommendations as a first step. By its nature, disinformation will evolve rapidly, partly to counter recommendations like those in this report. The Task Force aimed to make immediately effective recommendations toward improving and maintaining public trust and confidence in courts, and to serve as a starting point for other court systems. Courts can modify these recommendations for their local jurisdictions, allowing them to be responsive and adaptable to their communities’ needs and expectations. The Task Force’s hope is that courts throughout the nation will share and learn from each other in building a stronger judicial branch that earns and maintains the trust and confidence of the public we serve, so that we may protect democracy together.

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9/1/2020 DRAFT intro/background section for stakeholder review

1. Deepfakes: The Next Big Threat to American Democracy? Government Technology, March 5, 2020. <https://www.govtech.com/products/Deepfakes-The-Next-Big-Threat-to-American-Democracy.html> [↑](#footnote-ref-0)
2. See <https://www.azcourts.gov/Portals/22/admorder/Orders19/2019-114.pdf> and Appendix at page xx [↑](#footnote-ref-1)
3. <https://www.foxbusiness.com/technology/facebook-will-start-flagging-some-political-content-that-violates-policies> [↑](#footnote-ref-2)
4. <https://blog.twitter.com/en_us/topics/product/2020/updating-our-approach-to-misleading-information.html> [↑](#footnote-ref-3)
5. Workgroup 1’s content appears last for convenience of formatting. The workgroup’s research and narratives were comprehensively arranged as background, analysis, findings, and recommendations, which argued for keeping their contributions as a unified whole. Its placement provides the added benefit of serving as a summary and reminders of the balance of the report and recommendations. [↑](#footnote-ref-4)
6. See the July 30, 2020 resolution from the Conference of Chief Justices/Conference of Supreme Court Administrators at

   <https://ccj.ncsc.org/__data/assets/pdf_file/0029/42869/07302020-Racial-Equality-and-Justice-for-All.pdf> and the National Center for State Courts’ compilation of statements from state supreme courts at <https://www.ncsc.org/newsroom/state-court-statements-on-racial-justice>. [↑](#footnote-ref-5)
7. COVID-19 Disinformation, How to Spot It – and Stop It, Union of Concerned Scientists, July 14, 2020: [https://www.ucsusa.org/resources/covid-19-disinformation;](https://www.ucsusa.org/resources/covid-19-disinformation) The Flood of Online Misinformation Around the George Floyd Protests, Lawfare, June 22, 2020: [https://www.lawfareblog.com/flood-online-misinformation-around-george-floyd-protests;](https://www.lawfareblog.com/flood-online-misinformation-around-george-floyd-protests) How Disinformation Has Morphed for the 2020 Election, Bloomberg, May 13, 2020: <https://www.bloomberg.com/news/articles/2020-05-14/how-disinformation-has-morphed-for-the-2020-election-quicktake> [↑](#footnote-ref-6)
8. Meeting the Third Branch of U.S. Government: The Supreme Court, Accessed on August 24, 2020, dummies.com: <https://www.dummies.com/education/politics-government/meeting-the-third-branch-of-u-s-government-the-supreme-court/> [↑](#footnote-ref-7)
9. See <https://www.uscourts.gov/news/2020/08/14/judicial-conference-approves-measures-increase-security-federal-judges>. [↑](#footnote-ref-8)