

**Task Force on Countering Disinformation
State Courts Building, Phoenix
Meeting Minutes: May 20, 2020**

Members attending: Aaron Nash (Chair); MJ Abril (telephonic, arrived 11:23); Fredric Bellamy (telephonic); Susan Dzbanko (telephonic); Jessica Fotinos (telephonic); Hon. David Fuller (telephonic); Dawn Gilpin (telephonic); Joe Hengemuehler (telephonic); Patience Huntwork; Hon. Todd Lang (telephonic, arrived 12:28); Krisanne LoGalbo (telephonic); Scott Ruston (telephonic); Nancy Rodriguez, proxy for Deborah Schaefer (telephonic); Hon. Donald Watts (telephonic until 12:00)

Absent: Hon. Bradley Astrowsky, David Bodney, Pete Dunn, Eduard Goodman

Guests: Elizabeth Parker; Kristy Roschke, presenter; Margaret Downie, presenter; David Withey, presenter (all telephonic)

AOC staff: Alicia Moffatt

1. Call to order. The Chair called the meeting to order at 10:01 a.m.

The Chair welcomed guests and members and made administrative comments.

2. Approval of minutes. The Chair called for corrections to the March 17, 2020 meeting minutes. None were offered.

Motion: A member moved to approve the minutes. The motion was seconded and passed unanimously. CDTF: 12.

3. Guest presenter. Kristy Roschke, Managing Director, News Co/Lab, Walter Cronkite School of Journalism and Mass Communication, Arizona State University

The Chair introduced Kristy Roschke from the News Co/Lab, a grant-funded research program at Arizona State University. The News Co/Lab recently partnered with First Draft on how messages are shared and how professional media can unwittingly amplify misinformation and disinformation. The public's view of the media shows political partisan divides.

Research shows that the closer the speaker of a message is to the person receiving the message, the more trust the receiver has in the message. The closer the speaker is to the receiver, the more positive or neutral the message appears. The further separated, the more negative the perception of the message. For example, the public generally would trust a message from a local elected official they might run into at the grocery store more than they would from a federal official they are not likely to meet or see.

More than half of those surveyed worldwide cannot tell real information from fake information and it is not easy to discern information just by looking at it. The response to the difficulty of determining real from fake is to focus on media literacy, or asking some basic questions of all information: who is behind the information, what's the evidence supporting the information, and what do other sources say about the information? The more the public asks

these three questions about the information they encounter, the more likely they will be to determine the trustworthiness of information.

Courts (and others) can build trust and credibility with the public in their messages by making their writing understandable and accessible. [Chair's note]: Legal writing and reasoning can be inherently complex and analytical, making plain English and clear writing even more important for the public. Fixing mistakes and errors – our own or others' – is important, even if it doesn't rebuild trust.

Ms. Roschke then answered questions and discussed issues with the members. For courts, talking more about the court process will build trust with the public. What happens within the courts' walls should not be a mystery, including case types and records that are not public. The public benefits from knowing why cases or records are not public and what the processes are, even though they cannot access the specifics of individual cases.

Although some minds cannot be changed, most people seem open to considering information and other people's perspectives. Confirmation bias and social identity play a role as well. For example, ideal or value statements that start with "I'm someone who..." or "I'm not someone who..." For professional media, journalistic ethics plays a large part in formal education, emphasizing ethics and responsibility in personal and professional roles. There is no such formal emphasis or requirement for casual reporters, the general public, and those who seek to create dissension and divisiveness.

One avenue for grading the credibility of a message is the Trust project (<https://thetrustproject.org/>) that vets the quality of information online, pushing more accurate information higher in search results while moving less trustworthy information lower in searches.

People want to feel that they are heard by those in authority. Judges who cannot or choose not to speak for themselves can speak through proxies without asking. For example, court employees, members of the general public and influencers like elected officials and celebrities can share messages and stand up for courts and the justice system. Familiarizing the public with what courts do helps build trust. Traditional media and the number of reporters assigned to court issues are shrinking, so they are not there to explain or amplify the courts' messages. Courts have to proactively reach out to the public through webinars and personal interactions. News releases and infrequent appearances will not break through the noise. Judges and court representatives have to regularly be in the public and stay there. Justices and judges could do regular town hall-type events and hear cases in the community. Taking questions from the public – the good and the bad – builds trust.

4. Guest presenters. Margaret Downie, Director, Commission on Judicial Conduct and Director, Judicial Ethics Advisory Committee; David Withey, General Counsel, Arizona Supreme Court and Administrative Office of the Courts

The Chair introduced Margaret Downie, retired trial and appellate judge and current Director of the Commission on Judicial Conduct (CJC) and Director of the Judicial Ethics Advisory Committee (JEAC). The Chair also introduced David Withey, General Counsel to the Arizona Supreme Court and Administrative Office of the Courts (AOC).

The CJC is an independent state agency, created in 1970 by a voter initiative, following the American Bar Association's (ABA) drive to create such a body in every state, which has since occurred. The CJC has jurisdiction over all courts in Arizona, but not of federal or tribal courts. Arizona's judicial discipline system is one of the most open in the country, posting

outcomes on its website, including those dismissed (with redactions for those dismissed). More than 50% of the complaints received are from disgruntled litigants who disagree with the judge's ruling, even though the CJC regularly advertises that they cannot reverse judges' rulings. The Commission is composed of 11 members, 6 of whom are judges. There are two attorney members appointed by the state bar and there are three public members who may not have been either judges or lawyers.

The JEAC is a nine-member committee of the Arizona Supreme Court, appointed by the Chief Justice. The JEAC can advise judges and judicial branch employees on their own behavior before they act, but not on conduct which has already occurred. The JEAC periodically issues formal opinions (two were issued in 2019) and those opinions are considered binding on judges. Most submissions and responses are informal, sent directly to the person requesting an opinion. Informal inquiries and opinions are confidential by court rule.

The members discussed scenarios with Judge Downie and Mr. Withey. Judge Downie said that judges are encouraged to speak publicly about matters of practice and procedure, and noted that judges should not speak about specific case matters, or about cases that are pending or that could be appealed. The Code of Conduct allows speech that could not reasonably influence a case.

Judges can respond to direct assaults on their character, but it would be very difficult, and likely unseemly, if judges tried to reply to every criticism. Judges should be seen as apolitical, but that is a policy decision beyond the CJC or JEAC. Years ago, the supreme court formed a group to create model answers to frequently asked questions, advising the public and court employees on what's legal advice and what is legal information.

A committee or workgroup of the Supreme Court might be a better way to develop guidance for what judges should say in response to attacks and when it is better for a judge to not respond at all. For judges uncomfortable responding to an attack, it is better to have a spokesperson – likely a public information officer or spokes-group – defend the judge, court, or court system. Mr. Withey suggested that the Countering Disinformation Task Force could be the body that recommends best practices for responses to various attacks, define what constitutes an attack and model responses. The AOC can create a committee or workgroup to move the idea forward and to provide guidance based on rules, Code, and policy.

The group debated the pros and cons of individual responses, local/regional/national responses, the use and makeup of a rapid response team, and how responses could vary if the attack is political or personal or based on an individual's personal case, like a divorce or civil or criminal issue. The members discussed the role of the Commission on Judicial Performance Review and how its existing public outreach could be used or expanded to address misinformation and disinformation.

Mr. Withey discussed the Code of Conduct for judicial employees, pointing out that it addresses how employees should conduct themselves, not necessarily how or whether they should correct someone else's conduct or comments. The Code emphasizes that court employees should protect the fairness and neutrality of courts and act cautiously in discussing matters pending and impending before their courts. Mr. Withey agreed that responding in some instances can amplify problems, but some situations warrant a best-practices response.

Mr. Withey advised that responses don't have to be case-specific. It's okay to explain processes, define terms, and explain how concepts like access and due process are provided generally. The point of contention in a specific case could be an appealable issue in that case, so it's best to avoid a response that could influence or jeopardize the case's future.

5. Discussions. The Chair welcomed workgroups 1 and 2 to update the members on their progress.

Workgroup 1. Dawn Gilpin and Scott Ruston updated the Task Force on Workgroup 1's analysis of the survey responses and comments from follow-up calls, classifying the actions and actors based on those responses. They are working on a visual representation of the analysis. Initial review shows that even with a definition of "disinformation," most responses were about misinformation, leaving many opportunities for education.

Several themes and narratives could be drawn from the survey responses. For example, characterization of judges and courts as the "bad guys" and that courts are pro-mother or pro-father, setting up the readers or listeners to believe that they are at a disadvantage before they first appear in court or before a judge.

The workgroup reviewed a website purporting to be a community forum with national reach where people can post reviews of individual judges (robingroom.com). The site appears dedicated to discrediting judges and the justice system, making the creation or spread of disinformation more likely, although usage of the site is very small, compared to other websites and interest groups. Most posts on the website are complaints from what appear to be individual litigants talking about individual cases or making generalizations about judges, courts, and the court system based on individual experiences.

The chair pointed out that there is a national discussion on whether platforms should be responsible for the content they host. The Task Force can note in its report and recommendations that this was discussed, but regulating platforms is a large and complex national policy discussion best left to the federal government to research and decide. The Task Force's approach is focused on education, outreach, and measuring results. A member suggested presenting a program at a statewide judicial conference to educate judges and staff about the platforms and websites that exist to rate judges and that could be spreading disinformation about them.

Workgroup 1 recommended:

- Better educating the judiciary on what disinformation is and how it differs today with the use of social media
- More robust education of the public, for example, what due process is, since lack of due process is a persistent complaint from those who are unhappy about a judicial ruling
- An outreach campaign to do a better job explaining to the public what courts do
- Measuring the impact of disinformation

Workgroup 1 offered to create a 5-10-page white paper to share what they have learned in their work (e.g. disinformation, misinformation, opinion, media etc.).

Workgroup 2. Judge Fuller presented a recommendation that the AOC contact an executive branch agency to draw-down public information collected at the federal level of registered foreign agents and post Arizona-related information in Arizona.

Motion: A member moved to include the recommendation in the Task Force report. The motion was seconded and approved unanimously. CDTF: 13.

Judge Fuller presented a recommendation that the report include recommending a Rapid Response Team to address attacks on individuals, courts, and the court system. Judge Fuller said he would continue developing the language of the recommendation, based on today's meeting.

Discussion: Patience Huntwork suggested that instead of a rapid response team, which could be perceived by the public as the courts or state bar choosing the targeted judge or court's side or position, there should be an ongoing approach to monitoring and responding to judicial branch attacks. This system would involve monthly reviews and reports from courts and judicial officers to the National Center for State Courts (NCSC) – perhaps a three-year project. Judge Fuller suggested a two-prong approach: The Rapid Response Team and a study group/monitoring process.

Motion: A member moved to include the Rapid Response Team recommendation in the Task Force report. The motion was seconded and approved, with one nay vote. CDTF: 14

Judge Fuller offered to prepare a recommendation for a group that would perform ongoing monitoring of disinformation, likely through the Public Information and Messaging workgroup of the Arizona Supreme Court's Commission on Access to Justice. The monitoring group and rapid response team would likely have members in common and could work together to identify and respond to disinformation campaigns, identifying areas of potential vulnerability and maintaining on-going measures of transparency and messaging. It was suggested that the NCSC could routinely give a report to the ABA or Congress or the National Conference of Chief Justices—so that there would be constant messaging back to those responsible.

Judge Fuller asked members to contact him directly with thoughts and ideas. Patience Huntwork offered to draft recommendations for the Task Force's consideration as well. She will prepare and send to the Chair for distribution.

6. Roadmap. The Chair encouraged members to draft recommendations to present to the Task Force, using the minutes, Codes of Conduct, rules of court, and research to make recommendations and to suggest appendix items for the report and recommendations. No presenters are currently scheduled for June, leaving more time to discuss and approve recommendations. Plans are pending to hear from the Federal Bureau of Investigation in executive session in July.

7. Call to the public. The Chair made a call to the public. None responded.

8. Adjournment. The meeting adjourned at 2:00 p.m.

Next meeting: Wednesday, June 17, 2020, beginning at 10:00 a.m.

Arizona State Courts Building, Conference Room 119 A/B
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