

Task Force on Countering Disinformation
State Courts Building, Phoenix
Meeting Minutes: August 19, 2020

Members attending (telephonic unless otherwise noted): Aaron Nash (Chair) (in person), MJ Abril, Fredric Bellamy, Susan Dzubanko, Nancy Rodriguez – proxy for Jessica Fotinos, Hon. David Fuller, Eduard Goodman, Joe Hengemuehler, Patience Huntwork, Krisanne LoGalbo, Scott Ruston, Deborah Schaefer, Hon. Donald Watts

Absent: Hon. Bradley Astrowsky, David Bodney, Pete Dunn, Dawn Gilpin, Hon. Todd Lang

Guests: Suzanne Spaulding, Elizabeth Parker, Lori Ford, Malinda Sherwyn

AOC staff: Alicia Moffatt (in person)

1. Call to order. The Chair called the meeting to order at 10:00 a.m.

The Chair welcomed guests and members and made administrative comments.

2. Approval of minutes. The Chair noted a typographical correction to the July 22, 2020 meeting minutes and called for additional corrections; none were offered.

Motion: A member moved to approve the minutes. The motion was seconded and passed unanimously. CDTF: 22.

3. Presentation. The Chair introduced Suzanne Spaulding, Director of the Defending Democratic Institutions Project at the Center for Strategic and International Studies (CSIS) and former Department of Homeland Security Undersecretary and Elizabeth Parker, Dean Emerita of the McGeorge School of Law and former General Counsel of the National Security Agency and the Central Intelligence Agency. They presented *Beyond the Ballot: Adversary Attacks on the U.S. Justice System*, an update to the Task Force based on events that have developed since the Task Force began its work in October of 2019.

Suzanne Spaulding provided the Task Force with background that CSIS' early work involved cyber defenses, which led to the realization of disinformation campaigns and that all the fundamental pillars of U.S. society are vulnerable to these campaigns, including the court system. CSIS has worked with 20 states and the District of Columbia through workshops in the last year.

Spaulding recommended that the report would benefit from mentioning the differences between misinformation, disinformation, and disagreement early and often, as those activities can be confused or misunderstood without regular repetition. Another reminder was to emphasize in multiple sections that this report is not a series of recommendations to defend judges, but is a defense of democracy.

Spaulding suggested that the makeup of a rapid response team would benefit from outside validators – something that can be informed by courts but not directed by courts. She also suggested reviewing some word and phrasing choices – verbatim language from the

establishing Administrative Order might not fit what the Task Force has developed over the course of its research and recommendations. For example, “removing” disinformation is very difficult to do, assuming you can definitively identify it as disinformation. But removal could be warranted if, for instance, the message could promote irreparable damage, like stating election day has been pushed back a week.

A member recommended that the report and recommendations do more to encourage courts to proactively engage the public and not be focused on reacting or responding to negative stories. There are positive stories and helpful information to share, which the courts can do effectively with some effort. This preceded a recommendation from Elizabeth Parker that the Task Force expand its list of recommended partnerships with traditional media, schools at all levels, and community groups like rotary clubs, emphasizing that courts must have credibility in their relationships before a crisis happens.

4. Discussions. The Chair guided the Task Force members through the draft documents that were presented for the day’s meeting, highlighting edits to prior versions or based on prior Task Force discussions. Task Force members and presenters provided suggested edits, which were made on screen or noted by the Chair.

The Task Force agreed to delete an earlier recommendation related to merit-selected judges being able to post a personal statement on the Judicial Performance Review website. Several reasons were stated, including the fact that some judges would be able to use the resource and others would not, that the website might not be used consistently, and that the logistics of potentially making the website a forum for merit-selected judges but not for the public or others would defeat the purpose of community engagement. It was noted that judicial officers can currently make statements by other avenues within the Code of Judicial Conduct.

The Task Force members discussed consolidating some of the individual recommendations from the draft, placing the recommendations in a different order than in the draft, and considered changing some of the recommendation draft language to better fit the recommendations, rather than using verbatim language from the Administrative Order that established the Task Force. The Task Force further agreed that an editing group be formed to implement these suggestions and to bring options back to the Task Force at the next meeting.

Editing group members stated during the meeting are: The Chair, Patience Huntwork, Judge David Fuller, Krisanne LoGalbo, and Deborah Schaefer. The Chair will provide the editing group an updated draft based on edits made during the meeting.

The Task Force agreed to send a draft of the report to stakeholders for review and comment before the September meeting. The Chair will arrange sending a draft to individuals from the Arizona Court of Appeals, Division One; Arizona State University’s Co/Lab; the American Board of Trial Advocates or Trial Lawyers, based on being named in the draft report; the National Center for State Courts; an American Bar Association group to be determined; the Arizona Bar Foundation; and selected Arizona Supreme Court committee or commission or association representatives.

5. Call to the public. In the interest of time, the Chair made a call to the public (item 6 on the posted agenda). Lori Ford and Malinda Sherwyn addressed the Task Force.

6. Research memo on a rating website. (Item 5 on the posted agenda). Task Force member Patience Huntwork presented an overview of her original research of a website that

purports to be a rating site of judges from all 50 states. For lack of time scheduled for the day's meeting, Huntwork will revisit the topic at the next Task Force meeting.

7. Roadmap. Task Force member Fred Bellamy presented a recommendation concept to the Task Force members for further consideration. The concept addresses how litigants, lawyers, and the judge overseeing a pending or impending case could agree to respond to a disinformation campaign, while maintaining privilege or confidentiality or otherwise not jeopardizing the court case. The Chair will coordinate a call between Bellamy and the Task Force's judicial officers to talk through the concept as a potential recommendation for the next meeting.

The Chair advised the Task Force that because September is the final scheduled meeting, the day will remain, but the time may be extended to ensure the Task Force can complete its work. Previously unseen recommendations are anticipated, as well as reviewing the editorial group's edits and the review of feedback from stakeholders. In September the Task Force will make final approvals for the draft report and recommendations. Outstanding recommendations are due to the Chair by September 4, 2020.

The final report and recommendations will be presented for the Arizona Judicial Council's review by the October 1, 2020 deadline. The Chair advised the Task Force members that the AJC could ask the Task Force to meet again for further edits or content to re-present for the AJC's December 2020 meeting. The Task Force's term currently runs through December 31, 2020.

8. Adjournment. The meeting adjourned at 2:12 p.m.

Next meeting: Wednesday, September 16, 2020, beginning at 10:00 a.m.
Arizona State Courts Building, Conference Room 230
1501 W. Washington St., Phoenix, AZ 85007
Link for remote audio/video attendance to be provided