

## EXECUTIVE SUMMARY

### Creation and Purpose of Task Force

Arizona Supreme Court Chief Justice Robert Brutinel's 2019 – 2024 strategic agenda for Arizona courts, *Justice for the Future, Planning for Excellence*, includes a focus on promoting public trust, confidence in, and awareness of courts and the role they serve in our society. Arizona's courts recognize that there are people, organizations, and foreign interests that intentionally instigate or seed disinformation using social media platforms, bots, and artificial intelligence tools with the goal of undermining public confidence in government institutions, including courts. The National Center for State Courts and intelligence professionals also recognize 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 they suffer when outside influences manufacture or amplify controversy to weaken the U.S. system of justice.

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

- a.) Review examples of disinformation and misleading campaigns targeting the U.S. and Arizona justice systems;
- b.) Consider the need for local and national responses and information sharing related to disinformation and ways to communicate accurate information;
- c.) Consider a centralized point of contact to assist in identifying disinformation and having it removed while respecting individual opinions and First Amendment rights;
- d.) Consider state or local legislation that would require foreign agents to identify their content to the public;

- e.) Propose approaches to public education and communication that accurately reflect the roles and processes of courts;
- f.) Suggest technology and resources that can identify disinformation campaigns early enough to counter them with accurate information;
- g.) 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 and service, media relations, training and education, international relations, security protocols, and service in trial courts, where most of the public interacts directly 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. Task Force workgroups continued meeting and subsequent Task Force meetings transitioned from in-person to virtual meetings from May 2020 throughout the duration of the Task Force's work.

Three overlapping events with global implications took place during the Task Force's work: The lead-up to the 2020 U.S. presidential election, the coronavirus pandemic, 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 and Twitter 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 to track and trace them, and how they are likely to adapt and morph over time, as well as 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 in response to public education and outreach. In addition, experts in court administration, technology, educational curriculum, security, [REDACTED], and national trends in courts addressed the Task Force.

Information about local and national experiences with and responses to misinformation and disinformation were a regular part of information shared and discussed at workgroup and Task Force meetings. Members of the public attended Task Force meetings and, in part, commented on the need for the report and recommendations to recognize and maintain First Amendment free speech rights and leaving space for robust debate and criticism of the government's actions.

The Task Force notes that some members of the public have a perception 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 those proceedings, and related 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 and publicly available, but are often not known or understood by 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. 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 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.

The Task Force was originally divided into several work groups, 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 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, along with 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 recognized that members of the public and others were contributing to developing meaningful final recommendations.

[Update the following to reflect actions taken]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 [\_\_committees, commission, presenters, NCSC,

etc, etc, etc,\_\_\_], allowing time for the workgroups to review and discuss the feedback received before the final Task Force meeting in September. At its September 2020 meeting, the Task Force discussed and approved what would become the final report and recommendations.

### **Abbreviated Recommendations**

1. 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.

2. 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.

3. Establish a national, centralized point of contact to assist in identifying disinformation and having it removed while respecting individual opinions and First Amendment rights.

4. Make the Judicial Performance Review website available for merit-selected judges to post a personal statement or to respond to misinformation and disinformation attacks.

5. Modify the Judicial Code of Conduct to specifically address personal attacks against judges.

6. Establish a Local/National Disinformation Monitoring Network.

7. Redesign the *Our Courts Arizona* (OCA) interactive civics program and include a court representative on Arizona's K-12 statewide educational programs:

(a) That the Arizona Administrative Office of the Courts (AOC) empanel a "redesign team" to redesign the structure of OCA and develop ways to best leverage the 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 5 or 7 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.); and

(b) That the redesigned OCA recommend a liaison to the Arizona Council for Social Studies or the Arizona Department of Education's Civic Education Community Engagement Program or any other body whose mission fits with the mission of OCA.

8. [placeholder] That each court have a Public Information Officer or other designee who is the court's contact point for responding to disinformation attacks.

9. [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 MASS COMMUNICATION LIST)

10. [placeholder] That courts coordinate with K-12 schools...

11. Workgroup 1's survey-based recommendations that the Administrative Office of the Courts (AOC) engage in educational and strategic communication outreach programs, a disinformation survey of the public, and more extensive academic review of disinformation campaigns targeting courts and the court system.

## REPORT AND RECOMMENDATIONS

### I. 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 Arizona's Administrative Office of the Courts' (AOC) Director Dave Byers, heard from the Center for Strategic and International Studies (CSIS) regarding examples of foreign influence in the 2016 presidential election. The presentation included reference to the potential for disinformation attacks against courts, as part of a larger campaign to create distrust and lack of trust in democracy and in U.S. government in general.

Director Byers returned to Arizona, updated Arizona Supreme Court Chief Justice Robert Brutinel on the presentation, and recommended that Arizona's 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 public's awareness of them grew 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. The protests, participants, and resulting images from these events were prime opportunities for misinformation, disinformation, and foreign influence.

As the Task Force's work converged with the 2020 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. America's courts can count on being in the spotlight in the future when resolving the highly-charged issues of 2020.

[NEED CONTENT] re: apparent gun violence targeting of a federal judge in New Jersey and the death of her son and wounding of her husband during an attack in July 2020. A member suggested expressing the task force's deep concern with the possibility of future violence against judges that could result from widespread mistrust of courts and judicial officers, particularly because there are in-person and online subcultures that promote the vilification of judges. The concern is the potential for violence when individuals cross the line beyond protest and complaint into illegal action. See <https://www.uscourts.gov/news/2020/08/14/judicial-conference-approves-measures-increase-security-federal-judges>. (also for appendix?)]

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. The better approach would focus on helping the public recognize disinformation and, equally important, restoring Americans' confidence in a just society, where due process is consistently enforced and access to justice for all is a reality. As a court system, we must work tirelessly to assure that our courts remain the model for the world, recognizing that our justice system is not perfect and must be constantly repaired and renewed. To achieve this, we need honest, dedicated critics and monitors of court proceedings. But we must also oppose malicious campaigns, foreign and domestic, that are intended to weaken our country through defaming courts as a co-equal branch of government.

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, like judges

and judicial branch staff, are more effective in reaching and engaging their neighbors than 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 courts and the trust and confidence in their performance and place within American culture and society. Partnerships with schools, communities, and all educational institutions are urgently needed to reinvigorate civics education.

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, misinformation and disinformation will evolve rapidly, partly to counter recommendations like those in this report. Arizona's Task Force aimed to make immediately effective recommendations to improve and maintain public trust and confidence in courts and to serve as a starting point for other courts and court systems that can modify these recommendations for their local jurisdictions, to be responsive 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.