

II. Recommendations.

Recommendation 1: Track and report those in Arizona who are registered as foreign agents under the Foreign Agents Registration Act, 22 USCA § 611, et. seq. (FARA).

The Foreign Agents Registration Act, 22 USCA § 611, et. seq. (FARA) requires certain agents of foreign principals who are engaged in political activities or other activities specified under the statute to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts and disbursements in support of those activities. Disclosure of the required information facilitates evaluation by the government and the American people of the activities of such persons in light of their function as foreign agents. The United States Department of Justice (USDOJ) has a FARA Unit within the Counterintelligence and Export Control Section (CES) in the National Security Division (NSD) that is responsible for the administration and enforcement of FARA.

Individuals who promote state-sponsored messages from a foreign government must register under FARA. USDOJ maintains information about registered agents and making this information available to the public in Arizona will support transparency and promote public awareness.

Arizona Supreme Court Administrative Order 2019-114 that established the Task Force on Countering Disinformation (Task Force), suggested that the Task Force consider legislation that would require foreign agents to identify their content to the public in Arizona. The Task Force spoke with subject-matter experts on FARA and on the legislative process in Arizona. In considering its options, the Task Force determined that legislation that would duplicate federal requirements would be confusing to those required to register and to the public. The Task Force recognizes the federal/international nature of this information along with existing federal reporting requirements and concludes that recommending state legislation is not effective; particularly since there is an existing federal law that achieves the same purpose (i.e., FARA). In addition, the Task Force determined that if an Arizona legislative proposal were to be presented, it would require input and implementation details from multiple stakeholders and would more appropriately be proposed by a non-judicial entity, based on a general understanding that

regulatory laws are a policy matter. As a result, the Task Force does not recommend state or local legislation requiring foreign agents to identify themselves or their content to the public.

Rather than pursue state legislation, the Task Force recommends that the Administrative Office of the Courts (AOC) approach an Arizona Executive Branch agency to secure a commitment that they compile publicly-available registration information from the USDOJ and publish Arizona-related information to that state agency's website. The Task Force identified the Arizona Department of Homeland Security and the Department of Public Safety as potential agencies to post this information, as both are statewide agencies responsible for monitoring and protecting the state's security interests. The Arizona Secretary of State's office was identified as another option, given its statewide responsibilities for elections and registering lobbyists.

The Task Force recommends that the AOC contact the Arizona Department of Homeland Security, the Department of Public Safety, or the Secretary of State's Office by March 2021 to secure a commitment to have the publicly-available federal FARA information posted online in Arizona.

Recommendation 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.

The definition of disinformation adopted by this Task Force reads as follows:

"False, inaccurate or misleading information that is deliberately spread to the public with the intent to undermine the democratic process, sow discord, profit financially, or create distrust of government institutions or public officials. Disinformation should not be confused with misinformation, which is false information shared by those who do not recognize it as such, or with legitimate criticism, protest or censure of government actions, institutions or processes."

During the many Task Force meetings, there have been plentiful and robust discussions surrounding what would constitute "disinformation." Much of that debate was mindful and protective of the cherished First Amendment protections of freedom of speech and of the press.

Judges are tasked with maintaining the dignity of the judiciary and their words and actions are essential to promoting public confidence. "A judge shall not be swayed by partisan interests, public clamor or fear of criticism." *Arizona Code of Judicial Conduct, Rule 2.4.* For

good reason, there is an historic and traditional reluctance by judges to respond to statements or publications of criticism. Criticism is inevitable and understandable in an adversarial system. However, “disinformation” is not criticism as defined above. The most challenging aspect of identifying misinformation from disinformation is divining the speaker’s intent. Even statements that are demonstrably and factually false can be honestly believed by the person making the statements. As a result, individuals and the court system will periodically be in a position to respond to statements that span a wide range of objective accuracy. In those instances that qualify as “disinformation” directed at a court or judge, there should be a method to respond.

It is noteworthy that, when related to a pending or impending case, Rule 2.10 of the Arizona Code of Judicial Conduct (ACJC) specifically prohibits certain public statements by a judicial officer or others at her direction. Rule 2.10(E) of the ACJC does allow a judge to “respond directly or through a third party to allegations in the media or elsewhere concerning the judge’s conduct in a matter.” However many, if not most, judges are hesitant to respond in such a manner. Their reluctance may be based in history, tradition or it may just be an unfamiliarity with how to judiciously respond while staying within the four corners of the ACJC.

Allowing “disinformation” to **occur unchecked** can be destructive to the truth and reality. Whatever the reason that judges may decline to respond to “disinformation,” in those instances where a response is necessary, one should be disseminated. When a response to disinformation is necessary, the size of a judge’s jurisdiction and the resources available may determine whether a proper response is possible. A smaller jurisdiction is unlikely to have a communications department, a public information officer, or even a court administrator to coordinate a response.

One inherent aspect of technology, and particularly social media, is its ability to spread information rapidly. This ability for a message or statement to “go viral” and reach thousands or millions of people in moments is only amplified by those with artificial intelligence or networked accounts that can exponentially increase the distribution of a message. Court systems and government in general have not adapted to this pace of rapid identification and resolution. Once disinformation is identified, a rapid response may be required. A judge who is the target of a disinformation campaign and who, as an example, is overseeing a trial, is not able to respond to the attack and may have professional limitations on the type and timing of the potential responses.

A Rapid Response Team would be a collaborative, cross-disciplinary group of individuals capable of identifying the attack and providing a response campaign within the jurisdiction's professional guidelines. The Task Force considered the importance of public perception around the makeup of a Rapid Response Team and that it should reflect a balance of members, so as not to create conflicts of interest. The Task Force recommended that the rapid response team be coordinated through a law school clinic, bar association, or other entity that could be in contact with courts and judicial branch individuals, but with independent authority and controls. The recommended makeup of a rapid response team included attorneys; public, non-attorney members; academics; members of the media; court public information officers or the clerk, administrator, or other designee who fills this role; and retired judges; plus opportunities to supplement the team on an as-needed basis.

The Task Force recommends that, particularly for the benefit of smaller jurisdictions, the Administrative Office of the Courts should have a "rapid response team" established to address situations where disinformation targeting a judicial branch individual, a court, or a court system occurs and a response is warranted. It is further recommended that a comment to ACJC Rule 2.10 be published to provide guidance as to how and when such instances should be addressed.

Recommendation 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.

The Task Force approached the National Center for State Courts with requests to serve in various roles related to countering disinformation. The Task Force recommends that the National Center and the American Board of Trial Advocates, as national associations of lawyers, judges, and court administrators, use their networks to identify, respond to, and request the removal of disinformation.

An individual, an individual court, and even a state court system, invariably lacks the ability to quickly reach a contact at a large social media or website provider for the review and removal of disinformation. Attempting to do so on a case-by-case basis could also be taxing for courts and the social media or website providers. The Task Force recommendation envisions the National Center for State Courts as a single point of contact, or a liaison between courts and technology corporations.

The Administrative Office of the Courts (AOC) should engage the National Center for State Courts (NCSC) as a centralized point of contact to assist with identification, response, or removal of disinformation specific to Arizona courts, in keeping with the auspices of the First Amendment. The Task Force on Countering Disinformation (Task Force) has secured a commitment from the NCSC to help the AOC achieve this goal.

The AOC should consider too the local chapter(s) of the American Board of Trial Advocates (ABOTA), a non-partisan national association of trial lawyers and judges, as a resource through which Arizona courts/their judiciary could respond “accurately, quickly, and fairly to unwarranted criticism of judges and courts.” The Task Force has not yet approached this organization.

Disinformation, e.g., verifiably incorrect or inaccurate information presented and disseminated to intentionally deceive the public, erodes trust in the courts, puts our democracy at risk, and frequently supports extreme, radical viewpoints and ideas. Inaccurate or biased information, articles, or commentary, often circulated and forwarded online, generate conflict and distrust in the justice system both within our community and the larger society.

Arizona Supreme Court Administrative Order 2019-114 suggested the Countering Disinformation Task Force consider a “centralized point of contact” that could “assist in identifying disinformation.” This body could act as an ombudsman, supporting Arizona courts in responding to or removing inaccurate information.

The Task Force has determined that timely intervention, the removal of erroneous communications **in some instances**, and the distribution instead of credible information by an influential, accountable, and trusted court partner would promote transparency, help courts preserve their integrity, and validate the accuracy of processes and statements. For this, the Task Force looked to the National Center for State Courts, a nonpartisan, non-profit research and consulting organization known for its collaborative work with the Conference of Chief Justices and the Conference of State Court Administrators, among others.

A Task Force workgroup first spoke with Jesse Rutledge, NCSC’s Vice President for External Affairs, in January of 2020, to determine the NCSC’s interest in pursuing such an undertaking. In conjunction with Mr. Rutledge’s positive feedback, the workgroup invited him to speak to the entire Task Force regarding the NCSC’s proposed methods for responding to the threat to courts and democracy that an unchecked proliferation of disinformation invites.

At the March 2020 meeting, Mr. Rutledge noted the NCSC had previously begun researching circumstances under which they could help the nation's courts respond to propaganda, develop a collective voice, and establish lines of communication between courts, stakeholders, public authorities, and media, both traditional and social. The Task Force voiced its opinion that Arizona courts should work together with the NCSC to forge and offer consistent policies and processes to address disinformation in the (Arizona) courts and legal system.

Mr. Rutledge stated that the NCSC would act as an ombudsman for the Task Force. He noted they would provide direct assistance to courts by creating a program designed to respond to disinformation, not only on behalf of Arizona but courts nationwide.

The Task Force recommends the AOC extend its partnership with the National Center for State Courts and establish a workgroup specifically tasked to work with them in this valuable endeavor.

The workgroup has further identified the American Board of Trial Advocates (ABOTA), as a potential resource. Information available online notes that ABOTA "defends judges who cannot publicly respond to criticism due to ethical prohibitions." Further, they provide "information to enable the public to understand legal problems facing our justice system when judges cannot defend themselves," and work "to maintain and support public confidence in the judiciary by providing timely assistance to members of the bench in responding to potentially damaging publicity."

Within their materials available online, one resource is "[Protocol for Responding to Unfair Criticism of Judges](#)." This protocol specifically addresses ABOTA's mission to "establish guidelines for each chapter of ABOTA" to "formulate and provide responses to misinformation." ABOTA has two local chapters within the state of Arizona, one in Tucson, the other in Phoenix.

The Task Force recommends the American Board of Trial Advocates be contacted to determine their interest in partnering with the AOC in countering disinformation in Arizona courts. If interest is verified, the Task Force recommends the workgroup convened to work with the NCSC be co-utilized for this endeavor.

Recommendation 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.

Arizona's judicial officers (judges, commissioners, magistrates, justices of the peace, judges pro tem, and hearing officers) can be appointed or elected to their positions, depending on their role, the court, the jurisdiction, and applicable law. All appellate judge candidates and superior court judge candidates in certain counties, are appointed by merit selection. After applying and a series of public interviews with an appointing commission, candidate names are submitted to the governor for appointment to the bench. Once appointed, merit-selected judges periodically appear on the public's ballots for retention elections.

Arizona's merit-selection process includes a Judicial Performance Review Commission (JPR) that, through a series of surveys of litigants and lawyers, rates judges as "meets" or "does not meet" based on several defined judicial standards. In addition to election publicity pamphlets that are mailed to registered voters, the JPR maintains a website (<https://www.azcourts.gov/jpr/>) where the public can view information on merit-selected judges and their performance.

As a result of its year-long study, the Task Force has become aware of ongoing attacks on the reputation of individual Arizona judges via the Internet, broadcast media, social media, or other means. Many of these attacks have no basis in fact and are designed to undermine public confidence in the judge and the administration of justice. At best, these attacks create distractions from the work of the court and at worst they tend to discourage qualified individuals from serving in the judiciary. Whether the judge is located in a merit selection county or stands for popular election, his or her electoral prospects and standing in the community may be unfairly impacted. In extreme cases, the judge or justice may feel compelled to devote scarce personal resources or to call upon supporters to defend his or her reputation. At the same time, measurable public trust in the judiciary has statistically declined to an alarming extent, jeopardizing an indispensable foundation of our democratic system.

The Task Force believes that the Rules of Procedure for Judicial Performance Review (JPR) and the JPR website should be amended to provide a mechanism for judges in merit selection counties to provide personal statements or otherwise address attacks originating outside the JPR formal comment procedure, such as on the internet and on social media. The ballot for each Retention Election should contain a printed reference to the JPR website preceding the list of candidates for retention in recognition of the fact that many voters vote by mail, desire more information on judges, and can take the time to consult the website before voting.

The Task Force recommends adding a section to the JPR website where merit-selected judges can post a personal statement, post a link to a personal statement posted on another official court website, and as a place where the judge can respond to misinformation or disinformation about the judge.

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

The Arizona Code of Judicial Conduct (ACJC) should be amended to affirmatively state that a judge, whether elected or appointed, and the judge's designee, may respond to attacks upon the judge's reputation from whatever source in writing, via social or broadcast media or otherwise, so long as the response otherwise complies with the Code's requirements. This recommendation conforms to ACJC Rule 4.1, where Comment 9 specifies that during a campaign for judicial office, candidates may respond directly to false, misleading, or unfair allegations made against him or her during a campaign. Likewise, Comment 3 to Rule 4.3 specifically authorizes judicial candidates during a campaign to make a factually accurate response to false or misleading allegations. The most likely place for this addition is to ACJC Rule 2.10 and the comments following the rule:

Rule 2.10 (E): Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter or to false, misleading, or unfair allegations or attacks upon the judge's reputation from whatever source in writing, via social media or broadcast media or otherwise.

Comment 3 to the Rule: Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connections with allegations concerning the judge's conduct in a matter, or to false, misleading, or unfair allegations or attacks upon the judge's reputation.

Recommendation 6: Establish a Local/National Disinformation Monitoring Network.

As a result of its year-long study, the Task Force perceives a need to study the phenomenon of unfounded attacks upon the judiciary over a more sustained period and as part of an effort that is both local and national. Participants would jointly agree upon the time needed for the study, for example 2 or 3 years, and agree to report back with tabulated and anecdotal findings on the prevalence of anti-judge and anti-court disinformation in the states and in the

United States generally. The Task Force believes that such an effort will provide more complete and granular scholarship and more accurate understanding of the methodology of anti-judiciary disinformation campaigns designed to undermine the rule of law. The Task Force did not presume that any one state court system could fund or conduct the study without the assistance and cooperation of others.

The Task Force recommends that Arizona encourage the National Center for State Courts to investigate the scope and possibility establishing a multi-state Local-National Disinformation Monitoring Network consisting of cooperating monitoring groups in a number of other states.

Recommendation 7: The Task Force makes the following recommendations regarding the *Our Courts Arizona (OCA) interactive civics program:*

- (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.

A staggering number of Americans are poorly informed about civics, the courts and basic Constitutional protections. There are many studies that show the declining degree to which the public is aware of the Constitutional protections we enjoy. “Protecting the rights guaranteed by the Constitution presupposes that we know what they are. The fact that many don’t is

worrisome.” “These [survey] results emphasize the need for high-quality civics education in the schools and for press reporting that underscores the existence of constitutional protections.”¹

A well-informed citizenry is essential to counter disinformation; particularly, with respect to our cherished, yet fragile, Constitutional Republic. It is widely recognized that a significant portion Americans are ill-informed of the precious protections and democratic processes we enjoy. “The Center for the Study of the American Dream at Xavier University reported that just 64 percent of native-born Americans could pass the naturalization test immigrants must take to become a US citizen. Immigrants applying for citizenship pass the simple civic literacy test at a rate of 97.5 percent ...”² Without a working knowledge of how our government operates, it is not surprising that efforts to discredit it are increasingly successful.

“U.S. democratic institutions are being attacked from external as well as internal forces, posing a national security threat that can no longer be ignored, according to security experts.” ... “That was the assessment of Suzanne Spaulding and Elizabeth Rindskopf Parker, two former national security advisors who spoke at the program ‘Beyond the Ballot: How the Kremlin Works to Undermine the U.S. Justice System,’ presented Feb. 13 during the National Association of Bar Executives Midyear Meeting held in conjunction with the ABA Midyear Meeting in Austin, Texas.” ... “‘The threat to democracy in our civic education is one we need to take seriously,’ she said. ‘Disinformation is designed to undermine our political system.’”³

The Arizona Code of Judicial Conduct, Rule 1.2 requires that judges promote public confidence in the judiciary. In fact, Comment 6 to that rule encourages judges to actively participate in promoting the public’s understanding and confidence in the administration of justice.⁴

¹ (Quoting, Kathleen Hall Jamieson, September 12, 2017, “Americans Are Poorly Informed About Basic Constitutional Provisions”, Annenberg Public Policy Center of the University of Pennsylvania. <https://www.annenbergpublicpolicycenter.org/americans-are-poorly-informed-about-basic-constitutional-provisions/> . See also, Promoting Civic Literacy and Engagement during the COVID-19 Pandemic, March 23, 2020.

<https://politicalsciencenow.com/promoting-civic-literacy-and-engagement-during-the-covid-19-pandemic/>)

² <https://youtu.be/xJFuOF04wss>

³ Disinformation, poor civic literacy imperil U.S. democracy, Feb. 17, 2020.

<https://www.americanbar.org/news/abanews/aba-news-archives/2020/02/deepfakes-democracy-and-courts/>

⁴ <https://www.azcourts.gov/portals/137/rules/Arizona%20Code%20of%20Judicial%20Conduct.pdf>

OCA was initiated in 2014. Its purpose was to be an interactive civics program aimed at adult groups. Its goal was to provide easy to understand, non-partisan, interactive sessions to be taught by current and retired judges. The volunteer judges were to engage audiences and provide information about the importance of fair, impartial, and accessible courts and the rule of law.

The participation in this worthwhile program has greatly waned over the years. Currently, the program consists of a webpage⁵ explaining what the program offers and a link to the “Our Courts Arizona Request” form.⁶

Initially, the focus of the Task Force Workgroup assigned to “propose approaches to public education and communication that accurately reflect the roles and processes of courts” was to examine how to revitalize, promote and broaden the audience for OCA. However, after numerous meetings with teachers, leaders and experts in the field of Civics, Government and Social Studies education, it was discovered that there are currently many different organizations already offering excellent opportunities virtually identical to OCA. The areas that these organizations are overwhelmingly in need of support and assistance in are:

1. Marketing their availability (“getting the word out”) to teachers, principals, organizations’ leadership, parents, students, etc.;
2. Recruiting of subject matter experts; and
3. Content creation.

The many different organizations throughout the country that share OCA’s common mission of providing the public with opportunities to learn about the critical areas of Civics and the courts are abundant. [For a sample list of organizations primarily based in Arizona, see Appendix xxx.]

⁵ <https://www.azcourts.gov/ourcourtsaz>

⁶ <https://www.azcourts.gov/Portals/196/Users/091/91/91/OurCourtsArizonaRequest2015.pdf>

Organization	Service(s) Provided	Web Address
Arizona Council for Economic Education (ACEE)	Teaching resources and student/teacher workshops for civics classes	ACEE / Arizona Council for Economic Education https://www.azecon.org/
Arizona Council for History Education (ACHE)	Teaching resources for civics teachers	ACHE / Arizona Council for History Education https://azhistorycouncil.org/
Arizona Council for the Social Studies (ACSS)	Teaching resources and teacher workshops for civics classes	http://acssaz.org/
Arizona Department of Education (ADE)	Teacher resources and support	ADE / Arizona Department of Education https://www.azed.gov/calendar/events/
Arizona Foundation for Legal Services and Education - We the People; Project Citizen; Kids Voting AZ; Mock Trial; Teen Court; Law Day; Constitution Day; Connecting with Classrooms	Connects volunteers to classrooms; teaching resources, curriculum, civics competitions	www.lawforkids.org or www.azbf.org
Arizona Geographic Alliance (AzGA)	Teaching resources/lesson plans and teacher workshops for civics classes; Guest Speakers	AzGA / Arizona Geographic Alliance https://geoalliance.asu.edu/
Arizona Historical Society (AHS)	Teaching resources/lesson plans and teacher workshops for civics classes	AZHS / Arizona Historical Society https://arizonahistoricalociety.org/
Arizona Humanities	Guest Speakers	https://www.azhumanities.org
Arizona Law Alliance	Guest Speakers	
Attorney General Community Outreach	Guest Speakers	https://www.azag.gov/outreach/presentation-request
AZ Model UN	Program based out of U of A which has brought High School students together for a UN simulation annually	https://www.arizonamun.org/
Center for the Future of Arizona	Teacher resources	https://www.arizonafuture.org/
Citizenship Counts	Teaching resources/lesson plans and teacher workshops for civics classes; Guest Speakers	https://citizenshipcounts.org/
iCivics - National Organization	Teaching resources/lesson plans for civics classes	www.icivics.org
Inspire US	Voter registration - will go to AZ schools to register students and give presentations	https://www.inspire2vote.org/
Joe Foss Institute	Teaching resources/lesson plans	https://joefossinstitute.org/
League of Women Voters	Voter registration - will go to AZ schools to register students	https://www.lwv.org/
Maricopa County Recorder's Office	Provides student tours of tabulation center, guest speakers, allows schools to use voting machines	https://recorder.maricopa.gov/
National Council for Social Studies	Teaching resources and teacher workshops for civics classes	https://www.socialstudies.org/
YMCA	Conducts annual Youth in Government simulation that gives students an opportunity to simulate Legislative, Executive and Judicial branches of government at the Capitol	www.ymca.net

The Arizona Foundation for Legal Services and Education⁷ is one of the organizations that is actively involved promoting Civics education. In 1978, the State Bar of Arizona created the Arizona Foundation for Legal Services & Education, charging it with the mission of promoting access to justice for all Arizonans. Part of the way the Foundation strives to fulfill this mission is by preparing Arizona youth for civic responsibility.

While investigating how to best “revitalize” OCA, it became clear that the way to best achieve its goal of providing “... a refresher.... [to] some of the cornerstones of our democratic form of government, our rights, and the importance of separation of powers.... [and to] ... address these issues in an interactive way and to encourage further thought and discussion about

⁷ <https://azbf.org/>

the topics addressed”⁸ would be to support the many organizations already performing this immensely important endeavor. The phrase “we shouldn’t reinvent the wheel” was bandied about.

During one of our many Workgroup meetings, two speakers enthusiastically expressed the need for support and assistance in the above-mentioned areas. Ms. Tammy Waller⁹ expressed that an opportunity for coordinating courts with schools and pairing history and civics with real-world court experiences would be of immeasurable value.

Ms. Jennifer Castro¹⁰, from the Arizona Foundation for Legal Services and Education, also offered many ideas of how OCA could be a valuable partner in this critical area of education. She indicated that some of the areas where they could use help are:

1. Mock trials and other court-related events and programs. She explained that having people who work in courts there makes a difference and lets the public see court representatives outside of the courthouse¹¹;
2. Outreach. Classrooms and school leadership often do not know what the courts have to offer. One of the specific things the “redesign team” can explore is how we can help to promote the programs. None of the organizations contacted had a Public Information

⁸ See, “What is Our Courts Arizona?” at <https://www.azcourts.gov/ourcourtsaz>

⁹ Tammy Waller is the Director for K-12 Social Studies and World and Native Languages at the Arizona Department of Education. She has been at the department for 5 years. She is also co-manager of the Civic Education and Community Engagement Program, a statewide program supporting schools that have demonstrated strong civic learning and engagement through an award program. She is in charge of the statewide Civic Learning Conference and provides continuous professional development for educators. Currently, she is also on the Executive Committee, Steering Committee, and co-chair of the History Task Force for the Educating for American Democracy NEH/DOE grant. Tammy also is involved with the Arizona Mock Trial Program, is adjunct faculty at Arizona State University, and has been a state and national trainer for Law Related Education Programs.

¹⁰ Jennifer Castro is the Senior Director of Education Programs at the Arizona Foundation for Legal Services and Education providing direction for the Foundation’s civic and law-related trainings. She oversees program implementation into schools, and provides technical assistance to Arizona educators. She works closely with the Arizona Department of Education as well as local and national funders to implement civic education. Ms. Castro received her B.S. at Arizona State University and her Masters Degree from Grand Canyon University.

¹¹ It is noteworthy that there are also several organizations that coordinate Mock Trial Programs like “Court Works”, led by Judge Mary Muguia of the 9th Circuit Court of Appeals. The recommended redesign team can be a conduit to coordinating volunteers for those different programs.

Office. Even a link on the AOC or supreme court's website, or a tweet mentioning an event, can help with outreach and promotion¹²;

3. Volunteers. This is an area where OCA could be of invaluable assistance. Access to real-world subject matter experts who are comfortable with speaking, our judges, is something that is tailor made for OCA to spearhead. For judges that want to volunteer but are not interested in speaking engagements, there is an opportunity to assist as well. For example, the LawforKids.org website has questions posted by students about courts and their role. Those questions are going unanswered. Judges could be of great assistance there. Given the chaotic circumstances schools are experiencing due to the current COVID-19 pandemic, teaching "... institutions are under rising pressure to increase the number and variety of online [opportunities]."¹³ For the judges whose schedule previously did not afford the time, or whose location made it difficult to travel to presentation locations, remote/virtual options are available. The methodology of teaching and presentations is rapidly evolving toward the virtual platform. This will make judges' availability more plentiful; and
4. Liaisons. A representative of the judiciary would be a valuable asset on the boards of the Arizona Council for Social Studies, or the Arizona Department of Education's Civic Education and Community Engagement Program, or any other body whose mission fits well with the mission of the OCA. Both above-mentioned speakers enthusiastically requested our presence on the aforementioned bodies.

OCA could positively impact Civics education in Arizona and these recommendations are offered to lead that impact.

The Task Force makes the following recommendations regarding the "Our Courts Arizona" interactive civics program:

1. 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

¹² None of the various Civics Education organizations contacted have Public Information Offices.

¹³ Promoting Civic Literacy and Engagement during the COVID-19 Pandemic, March 23, 2020. <https://politicalscienow.com/promoting-civic-literacy-and-engagement-during-the-covid-19-pandemic/>

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

2. That the redesigned OCA select 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.

... [Recommendations 8-10 (or however many) here. WG1’s recommendation format]...

Recommendation 11: 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.

Among the tasks assigned to the Task Force was a need to understand the general awareness by court officials of misinformation and disinformation activities and to gain insight into the prevalence of these activities affecting Arizona courts. Put another way, the Task Force sought out whether court officials knew about disinformation and whether there were examples available to analyze and therefore better understand the problem in Arizona. To accomplish this goal, the Task Force formed Workgroup 1 to conduct a survey of court officials throughout Arizona, analyze the results of the survey, and make recommendations based on the findings.

To assist Workgroup 1 and the Task Force in fulfilling its mandate, the Task Force developed the following definition of disinformation:

“False, inaccurate or misleading information that is deliberately spread to the public with the intent to undermine the democratic process, sow discord, profit financially, or create distrust of government institutions. Disinformation should not be confused with misinformation, which is false information shared by those who do not recognize it as such, or with legitimate criticism,

protest or censure of government actions, institutions or processes.”

Survey Details

To fulfill its mandate, Workgroup 1 developed an online survey for Supreme Court justices, court of appeals judges, adult and juvenile probation chiefs, superior court clerks, all superior court judges, all justice court judges, all municipal court judges, the clerks of the courts of appeal and the supreme court, superior court administrators, justice and municipal court administrators, the Administrative Office of the Court’s director, Arizona’s tribal courts, and federal judges working in Arizona. The survey was not a survey of the public, litigants, traditional media or others, but was designed for and administered to judicial officers and judicial branch members to develop a baseline understanding of disinformation awareness and the impact of it on judicial officers and courts.

A link to the survey was sent by email to 584 individuals on January 2, 2020, and 223 responses were received by the January 17, 2020 response deadline. The survey provided respondents with the approved Task Force definition of the term “disinformation,” and included five questions and associated response options (See Appendix xxx). The survey also gathered demographics information such as role in the courts, years of experience in courts, location and level of court within the state, and gender. (See Appendix xxx). Respondents could opt-in to having their responses included in public documents. Of those who responded, 33 agreed to follow-up conversations on their responses and Workgroup 1 members reached out to each of them to clarify and gain greater insight into their survey responses. The follow-up conversations are reflected in the analysis that follows.

Analysis

Qualitative analysis of survey responses

The qualitative responses to survey questions about experiences with disinformation were manually coded through systematic, iterative review of the text to identify themes and patterns. No predetermined coding scheme was used, preferring an inductive method to avoid imposing expectations or bias and letting the respondents’ answers guide interpretation. What emerged was a set of categories, some of which focused on the types of behavior described, others on the individuals, groups, or institutions involved.

The category of “Online activity (online dissemination?)” can be seen less as a discrete class of behaviors, and more as a means of amplifying and disseminating behaviors that occur in other categories. The wide dissemination of accusations of bias or corruption, or misleading statements about the judiciary, increases their reach and potential impact on the public. It is important to note, however, that the survey was not designed to measure the reach of any of these online activities, and therefore the results point out the *potential* for such activity to extend mistrust of the judiciary to the broader public—the survey was not designed to assess whether it has actually done so.

The findings indicate there is widespread confusion within the judiciary about what constitutes disinformation, what forms it may take, and where it may come from.

The main categories of phenomena identified by respondents are:

- **Accusations of judicial wrongdoing.** One of the categories of perceived disinformation most frequently mentioned by respondents had to do with instances when the individual, or court, was accused of some kind of wrongful behavior. These might include accusations of corruption or fraud, of bias for or against certain types of defendants, or of politically motivated decision making based on partisan loyalties. While malicious actors might indeed try to undermine faith in the impartiality of the courts by making such accusations, or amplifying claims made by others, the more likely explanation is that these accusers are people unhappy with decisions made by the courts.
- **Legal disagreements and misunderstandings.** Another common pattern referred to people claiming that court decisions were incorrect, or describing the facts of the case in ways that survey respondents felt misrepresented the actual circumstances. Here again, from a disinformation perspective, it’s difficult to distinguish between good-faith misunderstandings or disagreements and those that might be made to purposely damage the reputation of the judiciary.
- **Disruptive actions in courtroom settings.** A number of respondents referred to incidents in which groups enter the courtroom to disrupt proceedings, often recording or live-streaming events on their phones. These disruptions tend to be coordinated by people who feel they have been wrongfully treated by the courts or who challenge their authority, and videos may

be edited to present an unfavorable impression of the judicial system. As such, these actions fall into a grey area with respect to our working definition of disinformation.

- **Fraudulent actions.** Some respondents described seeing counterfeit court orders, or hearing of “juror scams” conducted via telephone. These seem to be more accurately classified as fraud than as disinformation.
- **Media inaccuracies.** Several respondents complained about media coverage of judicial proceedings and court decisions. Some of their complaints referred to inaccurate or misleading reporting, while others dealt with dubious “research” making false claims about the workings of courts in Arizona, disseminated through consumer media or academic journals. Some respondents acknowledged that the media sometimes issues corrections to initial reports, often based on the reporter’s lack of legal knowledge or as an apparent effect of a rush to publish, rather than deliberately malicious acts.
- **Online dissemination.** Many respondents complained of information published online, whether on websites or social media, in text accounts or recorded videos. Most of these incidents involved the same kinds of phenomena described in the other categories, but given greater visibility via the internet. In this sense, they are not so much examples of distinct phenomena but rather of amplification, which can contribute to the spread of disinformation efforts where those may be occurring. They can also be the work of people acting in good faith who have encountered mis- or disinformation and believe they are helping to inform others by passing it along. This category also includes fake social media accounts, or the use of inaccurate or misleading information in online marketing efforts (such as YouTube videos) by attorneys.

For a full summary of results, including sample quotes from survey responses, see [Appendix XXX](#).

With the exception of a website that purports to be a national comment-and-rating site for the judiciary in all 50 states, which has been identified for further study, Workgroup 1 found no clear evidence of coordinated disinformation campaigns. However, the data do point toward mistrust of courts and judicial institutions among some members of the public, which in some cases is exacerbated by media reports or statements by influential public figures, including American political figures. This mistrust, if widespread, may represent a vulnerability in our

democratic system akin to that caused by inadequate civics education. These vulnerabilities are in turn ripe for exploitation by malicious actors, whether domestic or foreign, and could therefore open the door to future disinformation operations.

Survey respondents named different types of individuals and groups as responsible for the actions described. These ranged from parties to court proceedings, whether litigants or attorneys, to elected officials, formally and informally constituted groups, and political parties. See Appendix xxx (was Table 2 in draft) for details.

Narrative analysis of described disinformation events

While individual news articles, social media posts, and videos might contain pieces of information that are false and misleading and distributed with ill intent, the destabilizing nature of disinformation campaigns is magnified when these individual elements become *narratives*. Narrative is particularly powerful rhetorical form because it offers a framework for understanding the world through cause and effect, presents characters or agents with whom audiences identify, and charts a pathway to resolve conflicts or grievances. These components combine to evoke emotion and to express values. Of utmost concern to the judiciary are narrative systems in which the trajectories only resolve in justice outside the judicial system or those that resolve in injustice and unfairness leading to conclusions that the judiciary does not uphold societal values.

While this survey was not optimized to collect primary evidence of disinformation (i.e., the posts, videos, articles themselves), the anecdotal evidence provided by the survey respondents points to some repeating narrative elements. Individual character attacks about specific judges allegedly engaging in criminal or unethical behavior, combined with claims of system wide malfeasance (e.g., kidnapping and trafficking of children) to establish a narrative in which the judicial system is evil and corrupt, and in which justice is not possible. As such a system has the potential to fuel mistrust in the competency, independence, and virtue of the courts system, further investigation collecting primary evidence and conducting deeper narrative analysis is warranted.

The emotionally charged and unfounded claims against the justice system could have a disproportionate negative effect on the public's perception of courts when, in fact, millions of court events take place each year in Arizona's courtrooms where controversies are resolved peacefully, opposing parties reach agreements, families are provided stability and direction,

victims are heard and receive restitution, and the criminal justice system works to balance community safety and individual accountability.

Conclusions

The first and strongest conclusion the workgroup drew from its survey was that knowledge of disinformation is not consistent across the Arizona's judiciary. This applies to perceptions of the severity of the problem (numerous responses of "no, haven't seen any"), as well as understanding how to distinguish disinformation from litigants and inaccurate reporting.

Furthermore, the survey cannot evaluate trust or mistrust of the judiciary by the public, which is a key concern of the Task Force. However, there is enough anecdotal evidence of activities, events and examples of a type that could be exploited by disinformation actors, both foreign and domestic, for malicious purposes. Therefore, additional studies specifically designed to assess the scale of the examples revealed by the survey, as well as studies designed to measure the relative confidence and trust in the judiciary by the general population, are both warranted.

Misinformation can be exploited by disinformation actors, as described by subject matter expert assessments of the targets of the 2016 election meddling, manipulations of social media (both by foreign actors and domestic groups) related to racial justice protests in 2020, in responses that were seen to the coronavirus pandemic, and in the lead-up to the 2020 presidential elections. With the exponential growth of controversial events and responses to them, and the fact that many controversies are resolved by courts, the judiciary is a likely target of future disinformation campaigns. State courts would be wise to invest in the resources to study the problem more thoroughly, using commercial off-the-shelf social listening tools, or commissioning an organization to build custom tools. Such study should measure social media networks and the spread of destabilizing narratives about the judiciary. Such ongoing study would require resources (labor and data and tools) beyond the scope of the Task Force.

Recommendations

1. Establish education and strategic communication outreach. Numerous examples identified by the survey and subsequent follow up phone calls indicate there is a lack of awareness or understanding of judicial procedures, jurisdictions, and how these elements of judicial process support democratic and civic values. This knowledge void exists both within the general public and among journalists covering the courts. The Task Force recommends that the Administrative Office of the Courts (AOC) engage in an education

and strategic communication outreach program, including workshops to educate journalists and advocacy for civics education in secondary schools. The strategic communication component should include: regular, repeating, small scale education (e.g., public service announcements); a consistent and active social media presence that announces court actions connecting the court action to the values of the judiciary and upholding the rule of law; and the construction (at the AOC level) of pro-active narrative templates for court communication.

2. Advocate for further study. While the survey achieved the goals directed in AO 2019-114, it raised other, novel questions to pursue. **With the exception of a website that purports to be a national comment-and-rating site for the judiciary in all 50 states, which has been identified for further study,** the survey did not reveal significant hotspots of disinformation activity, but the results did indicate that misinformation is prevalent, potentially eroding faith in the objectivity and sanctity of the judiciary—not because of malicious intent, but because of a lack of accurate information, consistently delivered.