

EXECUTIVE SUMMARY

Creation and Purpose of Task Force

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

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

To address these issues in Arizona, on September 18, 2019, Chief Justice Brutinel issued Administrative Order No. 2019-114² ("AO 2019-114"), establishing the Task Force on 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;

¹ Deepfakes: The Next Big Threat to American Democracy? Government Technology, March 5, 2020.

<https://www.govtech.com/products/Deepfakes-The-Next-Big-Threat-to-American-Democracy.html>

² See <https://www.azcourts.gov/Portals/22/admorder/Orders19/2019-114.pdf> and Appendix at page xx

- 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, media relations, training and education, international relations, security protocols, and administration of the trial courts, where the public most directly interacts with Arizona’s courts.

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

The Task Force was originally divided into several workgroups, each assigned one or more of the directives in AO 2019-114. Workgroups met in breakout sessions scheduled at the discretion of the workgroup leaders, periodically inviting subject matter experts to give presentations and to suggest

approaches on various topics. Workgroup 1 consistently worked toward creating, administering, and analyzing a disinformation survey of judges and other court professionals in Arizona. As the Task Force narrowed its recommendations toward education and outreach, the remaining workgroups consolidated over time into a single Workgroup 2.

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

Three overlapping events with global implications took place during the Task Force's work: The coronavirus pandemic, the lead-up to the 2020 U.S. presidential election, and the racial justice movement spurred by the death of George Floyd. The occurrences of misinformation and disinformation revolving around these events appear to have grown exponentially, and discussions of misinformation and disinformation in public discourse increased as well, as evidenced by social media giants like Facebook³ and Twitter⁴ deploying account restrictions and notifications based on sources and content they reviewed from posts by account holders. How these events provided context for the Task Force's work and the misinformation and disinformation surrounding them, appears in the background section later in this report.

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

Information about local and national experiences with, and responses to, misinformation and disinformation were a regular part of the discussion at workgroup and Task Force meetings. At the same time, members of the public who attended Task Force meetings commented on the need for the Task Force

³ <https://www.foxbusiness.com/technology/facebook-will-start-flagging-some-political-content-that-violates-policies>

⁴ https://blog.twitter.com/en_us/topics/product/2020/updating-our-approach-to-misleading-information.html

to recognize First Amendment rights and to leave space for robust debate and criticism of the government's actions. The Task Force wholeheartedly endorses this goal.

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

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

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

The Task Force approved an incomplete draft report and recommendations at its August 2020 meeting to allow the report to be circulated for review and comment. The draft was sent to representatives from the following stakeholder groups for review and feedback: The National Center for State Courts; the Arizona Court of Appeals; Co-chairs of the Court's Commission on Access to Justice; the Arizona Association of Superior Court Administrators; the Arizona Association of Superior Court Clerks; the

Committee on Limited Jurisdiction Courts; the Arizona Bar Foundation; Arizona State University's Cronkite School of Journalism and Mass Communication, News Co/Lab; and the Tucson Chapter of the American Board of Trial Advocates (ABOTA). At its final meeting in September 2020, the Task Force discussed and approved a final report and recommendations.

Abbreviated Recommendations

1. Redesign the *Our Courts Arizona* (OCA) interactive civics program, nominate a court liaison to Arizona's K-12 statewide educational program committee, and expand the judicial branch's community outreach.
2. Establish in-person and web-based court contacts and outreach to help the public and the media understand the role of the court and the function of the judicial branch, and to help counteract and respond to disinformation at the local level:
3. Modify the Arizona Code of Judicial Conduct to specifically address personal attacks against judges.
4. 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.
5. Establish a Local/National Disinformation Study Network for further analysis.
6. Establish a national, centralized point of contact to assist in identifying disinformation and having it flagged or, if warranted, removed while respecting individual opinions and First Amendment rights.
7. [placeholder] That courts take advantage of available technology and resources that can identify disinformation campaigns early enough to counter them with accurate information (recomm will

name or list specifics or examples or categories and that courts obtain opt-in contact information that courts can use as a distribution list for correcting disinformation)

8. **Make federal public information available in Arizona regarding registrations as foreign agents under the Foreign Agents Registration Act, 22 USCA § 611, et. seq. (FARA).**
9. Engage in educational and strategic communication outreach programs and more extensive academic review of disinformation campaigns targeting courts and the court system,⁵ including a disinformation survey of the public.

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⁵ Workgroup 1's content appears last for convenience of formatting. The workgroup's research and narratives were comprehensively arranged as background, analysis, findings, and recommendations, which argued for keeping their contributions as a unified whole. Its placement provides the added benefit of serving as a summary and reminders of the balance of the report and recommendations.

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 David K. Byers, Director of the Arizona Administrative Office of the Courts (“AOC”), heard from the Center for Strategic and International Studies (CSIS) regarding examples of foreign influence in the 2016 presidential election. The presentation referenced the potential for disinformation attacks against courts as part of a larger campaign to create a lack of trust in democracy and in the U.S. government in general.

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

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

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

⁶ See the July 30, 2020 resolution from the Conference of Chief Justices/Conference of Supreme Court Administrators at https://ccj.ncsc.org/_data/assets/pdf_file/0029/42869/07302020-Racial-Equality-and-Justice-for-All.pdf and the National Center for State Courts’ compilation of statements from state supreme courts at <https://www.ncsc.org/newsroom/state-court-statements-on-racial-justice>.

⁷ COVID-19 Disinformation, How to Spot It – and Stop It, Union of Concerned Scientists, July 14, 2020: <https://www.ucsusa.org/resources/covid-19-disinformation>; The Flood of Online Misinformation Around the George Floyd Protests, Lawfare, June 22, 2020: <https://www.lawfareblog.com/flood-online-misinformation-around-george-floyd-protests>;

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

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

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

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

How Disinformation Has Morphed for the 2020 Election, Bloomberg, May 13, 2020:

<https://www.bloomberg.com/news/articles/2020-05-14/how-disinformation-has-morphed-for-the-2020-election-quicktake>

⁸ Meeting the Third Branch of U.S. Government: The Supreme Court, Accessed on August 24, 2020, dummies.com:

<https://www.dummies.com/education/politics-government/meeting-the-third-branch-of-u-s-government-the-supreme-court/>

⁹ See <https://www.uscourts.gov/news/2020/08/14/judicial-conference-approves-measures-increase-security-federal-judges>.

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

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

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

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

The Task Force views this Report and Recommendations as a first step. By its nature, disinformation will evolve rapidly, partly to counter recommendations like those in this report. The Task Force aimed to make immediately effective recommendations toward improving and maintaining public trust and confidence in courts, and to serve as a starting point for other court systems. Courts can modify these recommendations for their local jurisdictions, allowing them to be responsive and adaptable to their

communities' needs and expectations. The Task Force's hope is that courts throughout the nation will share and learn from each other in building a stronger judicial branch that earns and maintains the trust and confidence of the public we serve, so that we may protect democracy together.

II. Recommendations

Recommendation 1: Redesign the *Our Courts Arizona* (OCA) interactive civics program, nominate a court liaison to Arizona's K-12 statewide educational program committee, and expand the judicial branch's community outreach.

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.¹⁰ More than ever, there is a compelling need to remind our judicial officers of that requirement and to actively promote that participation.

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 waned over the years. Currently, the program consists of a webpage¹¹ explaining what the program offers and a link to the "Our Courts Arizona Request" form.¹²

A staggering number of Americans are poorly informed about civics, the courts and basic Constitutional protections. It is widely recognized that a significant portion of Americans are ill-informed of the precious protections and democratic processes 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."¹³

¹⁰ <https://www.azcourts.gov/portals/137/rules/Arizona%20Code%20of%20Judicial%20Conduct.pdf>

¹¹ <https://www.azcourts.gov/ourcourtsaz>

¹² <https://www.azcourts.gov/Portals/196/OurCourtsArizonaRequest.pdf>

¹³ (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/>)

“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 ...”.¹⁴ Without a working knowledge of how our government operates, it is not surprising that efforts to discredit it are increasingly successful. A well-informed citizenry is essential to counter disinformation; particularly, with respect to our cherished, yet fragile, democracy.

“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.’”¹⁵

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 the mission of OCA.¹⁶ The areas in which these organizations are overwhelmingly in need of support and assistance 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.

¹⁴ <https://youtu.be/xJFuOF04wss>

¹⁵ 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/>

¹⁶ For a sample list of organizations primarily based in Arizona, **see Appendix xxx (Judge Fuller’s chart from earlier version).**

The Arizona Foundation for Legal Services and Education¹⁷ 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's 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 the topics addressed”¹⁸ 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 Waller¹⁹ 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 Castro²⁰, 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: [make these letters not numbers]

1. Judicial Presence: Volunteers are needed for mock trials and other court-related events and programs. She explained that having people who work in courts there, particularly judges, makes a difference and lets the public see court representatives outside of the courthouse²¹.
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 to promote the programs. None of the

¹⁷ <https://azbf.org/>

¹⁸ See, “What is Our Courts Arizona?” at <https://www.azcourts.gov/ourcourtsaz>

¹⁹ Tammy Waller is the Director for K-12 Social Studies and World and Native Languages at the Arizona Department of Education, see Appendix xxx bio

²⁰ 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. see Appendix xxx bio

²¹ 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.

organizations contacted had a Public Information Office. Even a link on the AOC or supreme court's website, or a tweet mentioning an event, can help with outreach and promotion²².

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 coordinate. 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]."²³ 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.
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.

The Task Force recommends: [make these numbers not letters]

- a) That the Arizona Administrative Office of the Courts empanel a "redesign team" to redesign the structure of OCA and develop ways to best leverage OCA to provide support and assistance to the many organizations that offer civics education resources throughout the state. **It is recommended that the "redesign team" be comprised of [five or seven members and that it be a diverse representation of the Judicial Branch] [up to seven members and that the team includes diversity of judicial experience on and off the bench and diversity or educational and presentation experience].**
The redesign team should develop and implement a structured, standing OCA committee, with the

²² None of the various Civics Education organizations contacted have Public Information Offices.

²³ 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/>

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.);

- b) That the redesigned OCA recommend a liaison to the Arizona Council for Social Studies and the Arizona Department of Education's Civic Education Community Engagement Program or any other body whose mission fits with the mission of OCA; and
- c) That OCA coordinate with K-12 schools, universities, community groups, and other youth and adult programs to present information about courts, the judicial branch, and how media literacy protects democracy.

Recommendation 2: Establish in-person and web-based court contacts and outreach to help the public and the media understand the role of the court and the function of the judicial branch, and to help counteract and respond to disinformation at the local level.

AO 2019-114 asked the Task Force to consider methods of communication that would enhance and reflect the roles and processes of courts. Chief Justice Brutinel's message in his strategic agenda, "*Justice for the Future, Planning for Excellence*" emphasized the importance of the courts' need to "identify and address concerns or issues that may affect the public's trust and confidence in our justice system." In this recommendation, the Task Force addresses methods by which the judicial branch can enhance public awareness, including through online resources, social media, and court-led learning events for the media.

In today's environment of misinformation and disinformation, courts must do better increasing outreach and transparency to restore or maintain the public's confidence. Courts must understand the news media and how the courts are affected by media coverage. Courts must deliver timely, impartial justice, objectively and professionally, and ensure that the process is visible and accessible. **The National Center for State Courts is training state courts to develop playbooks for detecting and responding to disinformation and Arizona's courts are encouraged to take advantage of this training.**

Courts are encouraged to offer the public, especially those who enter the legal process without legal counsel, access to understanding their basic rights and responsibilities through simplified, user-friendly, easily accessible, legal information. And courts must take time to ensure that communities remember or learn the vital role the judiciary plays in society. **It bears reminding here that judicial officers are**

encouraged to explain their decisions thoroughly and in plain English, and particularly in controversial or high-profile cases, as those are opportunities to reach and inform large numbers of the public.

Hire or Designate a Court Public Information Officer

As George Bernard Shaw said, “*The single biggest problem with communication is the illusion that it has taken place.*” Countering disinformation requires that accurate information is both sent to and received by enough people who received the disinformation. A designated court Public Information Officer (PIO) helps ensure that a court’s information is available to the public.

A PIO can monitor for look-alike websites or social media accounts created to deceive the public into thinking they are official court websites or accounts. While some accounts can be protected expressions of comment, criticism, or satire, courts have experience with accounts intended to scare or intimidate unsuspecting individuals into paying money, believing they are resolving a traffic ticket, warrant, or other court matter for themselves or others, only to learn they were scammed through an official-looking, but unofficial internet presence.

Court PIOs²⁴ connect with a diverse population: the public; the media; court participants; attorneys, judges, and court staff; justice partners and their information officers; law enforcement and more. They respond to public records requests, manage the court’s website and social media accounts, arrange interviews, coordinate media coverage, and support the delivery of information to court users, reporters, justice partners, and the public. They provide public relations, emergency and crisis communication, and ongoing outreach.

Much of the public’s knowledge of the court system comes through the media. Although often not intentional, media coverage of the justice system is not always precise, and important details can be overlooked in the media’s rush to be the first to report a story, or due to deadlines or the limited word space available. Inaccuracies are part of the difficulty of countering disinformation; at the center of a disinformation snowball is a snowflake of truth.

In years past, “beat” reporters became familiar with law and procedure. Today finds far fewer specialists in newsrooms; most reporters cover multiple subject areas and work as writer, editor, producer, and camera operator as a multimedia journalist. It is increasingly rare that a reporter has the time to understand legal jargon, processes, and complex court rulings, particularly for breaking news. Reporters

²⁴ [attach this Fn to the header] For this report, “PIO” refers to the person or department designated to perform the functions included here. Common titles include Communications Counsel, Communications Director, Community Outreach Coordinator, and Communications Specialist. In some courts this is the presiding judge, court administrator, or clerk of court.

can be rushed to produce, publish, and tweet and might not have the time or discretion to return to a story, even though additional information would add context or provide clarity.

Inaccurate reporting damages the public's perception of courts and can be the basis for disinformation. PIOs answer questions, ensure the media understands essential information, and provide enough factual background to allow the most inexperienced journalist to tell an accurate, well-rounded story. PIOs ensure that information about a court is correct, timely, and meaningful, and follow up with the media when inaccuracies are reported.

In Arizona, courts without a designated PIO can contact the Administrative Office of Courts' PIO, contact another court that has a designated PIO, and can contact the Conference of Court Public Information Officers²⁵, a nationwide court PIO organization, for help with creating communications and responding to local situations. Additionally, some courts may have resources in their local government. Many jurisdictions - cities and counties alike - employ a public information officer or communications team who share resources with their local court in responding to information requests and in posting website material.

Although helpful, the different branches of government must be clear regarding who is the records custodian and, to avoid inadvertent violations of court ethics rules, who is authorized to provide court responses.

Establish and Maintain a Court-Based Website

The public relies on the internet for information. According to an April 2020 study by Datareportal,²⁶ "4.57 billion people now use the internet, an increase of more than 7 percent" since April of 2019. A court-specific website or webpage can transform how the public understands and interacts with courts and the justice system. Likewise, Mr. Jesse Rutledge from the National Center for State Courts presented the Task Force with key findings from the 2020 State of the State Courts Survey, including research that has repeatedly shown that most Americans have little knowledge of courts. The sources individuals are most likely to consult for information, and the sources they trust the most, showed high reliance on a court's official website, traditional media, and personal relationships. Younger Americans are much more likely to both turn to and trust social media.²⁷

Individual court websites are the authoritative source of information for the media. Reporters seeking information, records, or verification for articles should be able to easily find answers to their

²⁵ <https://www.ccpio.org/contact-us/>

²⁶ <https://datareportal.com/reports/digital-2020-april-global-statshot>

²⁷ See the National Center for State Courts' 2020 survey at [URL]

frequently asked questions. When reporters cannot find what they need, a court's website should make it easy for them to find the PIO's contact information.

Court websites are often the first stop for those who need legal information, protective orders, resolution of disputes, and answers to basic legal questions. A well-designed website helps the public with their legal matters by providing accessible, understandable information and by making that process efficient, thus promoting trust and confidence in the justice system.

There is a persistent demand for access to justice through official, court-provided instructions and forms. For the ever-increasing numbers of self-represented litigants, a well-designed website with 24/7 access to legal resources is the proverbial "light at the end of the tunnel." It provides a higher quality of justice and access to courts. Convenient access to legal resources helps ensure court customers feel recognized, and, no matter the outcome of their dispute, that they received helpful, unbiased information.

Websites should be mobile-device friendly, searchable, engaging, and accessible. Information about the court and available legal services should be presented in direct, plain language²⁸ and, when possible, use visual aids to help explain complex legal concepts.

In addition to English-language documents, websites, and information, courts should ensure that content is available in alternative languages that meet their communities' needs. Vital documents and information must be provided in alternative languages.²⁹ For example, the Arizona Supreme Court includes a Spanish language self-service portal³⁰ on its website that other courts can link to, ensuring Spanish language help is available.

Many courts have established their websites through their local municipal or county platform. Courts without the ability to host their own website should ask their local city, town, or county to provide a webpage on their website. This court-specific webpage should minimally provide the individual court's most vital information, including a "contact us" link, protective order information³¹, and provide direction on accessing specific case information. Local court websites should leverage the work already done by pointing users to the Arizona Supreme Court/Administrative Office of the Courts site³² and to the Arizona Court Help website.³³

²⁸ <https://nacmnet.org/resources/publications/guides/plain-language-guide/>

²⁹ Limited English Proficiency mandates are not covered extensively in this report but must be followed by all courts. For an introduction, see <https://www.lep.gov/>

³⁰ <http://www.azcourts.gov/elcentrodeautoservicio/>

³¹ <https://azpoint.azcourts.gov/>

³² <https://www.azcourts.gov/>

³³ <https://azcourthelp.org/> hosted by the Arizona Bar Foundation, which provides links to forms, webinars, legal aid options, live chat forums, and more.

Establish a Social Media Presence

The effective and popular medium of social media is today's de facto communication device. Its uniquely strong influence on individual action has made its mark on society, while its immediacy of information is both its strength and weakness. The same Datareportal study mentioned above notes an anticipated “50 percent global penetration rate” in social media use by the end of 2020. Courts not engaged on one or more social media platforms ignore the public’s communication preference and limit the court’s ability to share information or correct disinformation.

The aspects that make social media attractive, including instant communication and photo and video sharing, also allow disinformation to spread quickly. Groups and individuals work endlessly to shape opinion in ways that serve their interests. These groups and individuals can, among other things, imperil the rule of law.

Courts must be mindful of the public’s First Amendment protections while meeting the public where they are – on social media. This helps courts stay relevant in the public’s view, while providing a platform to timely respond to inaccurate information. Social media allows courts to provide the public with accurate information. Years of experience demonstrate that courts can use social media within the bounds of courts’ ethics codes.

Like other government institutions, courts and the justice system are increasingly subject to scrutiny and, at times, unjustified, inaccurate criticism. One way to counter disinformation campaigns against courts and judicial officers is to have an outlet for precise, accurate, up-to-date rapid responses. Social media platforms provide that ability, and more. And in this time of lessened civics engagement, a social media presence helps courts inform and educate the public.

Social media helps courts remind the public of the role of courts in society and to share positive stories of the community the court serves, opening the doors of justice to far more individuals, while making a more personal connection between judges and the public. Additionally, social media is used to provide emergency information such as court closures, post job openings, provide updates on high-profile cases, release news bulletins, point the public to legal resources and respond directly to disinformation and other statements that are objectively false. Courts with the resources can maximize the “social” aspect of social media by interacting with the public, rather than simply posting information.

According to a 2012 article in the Huffington Post,³⁴ between December 2009 and December 2010, web-based email use by those ages 12 to 17 years of age declined 59 percent. Most young adults (and

³⁴ https://www.huffpost.com/entry/teens-email-use-study_n_1268470

increasingly older adults) get their news and communicate by text, Facebook, Twitter, and other social media platforms. Courts must acknowledge the move from traditional journalism (network television, newspapers, radio) to web-based news outlets (e.g. Google, Twitter, Facebook). And courts benefit from taking an active role in providing helpful and correct information about the judicial system. Courts may consult the National Center for State Courts' website for a step-by-step guide to setting up a social media account on Facebook³⁵, explore the use of social media in the courts,³⁶ review social media policies from courts nationwide, and more.

The Task Force learned that surveys show that word choice matters when countering disinformation. Courts can be effective by reminding the American public of what unites us, despite efforts by others to divide us. Courts are encouraged to use language of shared American values and the importance of democratic institutions when addressing disinformation.³⁷ Likewise, the Task Force reviewed a 2018 publication of the American Bar Association ("ABA") that contained information from more than 30 years of research into these topics. The ABA's materials recommend procedures for rapidly responding to misleading information and unfair criticism, with guidance on how websites and social media platforms can be used effectively in responding to these events.³⁸

Host Educational Roundtables for Reporters

Each year Florida hosts a two-day "Reporters Workshop" for "print, TV, radio and online journalists new to the courts and legal beats, or new to Florida."³⁹ This has proven effective in ensuring media more accurately reports on the law and legal processes. Courts in Arizona are encouraged, either independently or through collaboration with other courts and the Arizona or local bar associations, to arrange a shorter workshop for its media, two to four hours in length, twice a year or quarterly. These workshops would introduce new journalists to the courts while providing a refresher for veteran reporters and can be held in-person or through a virtual platform such as Microsoft Teams or Zoom.

Court/media workshops would introduce the court system, familiarize journalists with policies and procedures of the courts, introduce them to the basics of the law and its terms of art, provide information

³⁵ <https://www.ncsc.org/topics/media/social-media-and-the-courts/social-media/social-media-101>

³⁶ <https://www.ncsc.org/topics/media/social-media-and-the-courts/social-media/legal-use-of-social-media>

³⁷ See the National Center for State Courts' 2020 Survey at page 8: [URL]

³⁸ See the American Bar Association's 2018 publication, "Rapid Response to Fake News, Misleading Statements, and Unjust Criticism of the Judiciary" at [URL]

³⁹ <https://www.floridabar.org/news/resources/reporters-workshop/>

about the flow of a case and researching court files, and help ensure they better realize the humanity that exists behind every court participant, proceeding, and court decision.

These workshops help courts ensure that those who report on courts are informed of basic court proceedings and provide information about rules that govern restrictions on access to the court or to certain court records. Workshops should explain how the media gains access to proceedings, tips for reporting on high-profile cases, and provide the methods by which journalists access case information. They provide an opportunity to meet and ask questions away from the immediacy that a court decision, temporary restraining order, jury verdict, or trial sentencing requires journalists to report on.

Regularly scheduled media workshops invite the free flow of ideas between the media and the courts, including the court's need to maintain neutrality and judicial impartiality in pending cases. The benefit of a more informed media lies in its ability to more accurately and effectively deliver legal news, fulfilling its important and constitutionally protected role of educating and informing the public.

Produce Outreach Materials

As other sections of this report make clear, the public will discuss courts with or without input from the courts. Courts must be involved in those discussion and have answers to questions. Written materials, videos, telephone hold messages, methods for contacting courts, a mini guide on misinformation and disinformation are tools courts can provide to the public.

Courts have direct contact with the public through jury service, through the documents courts issue, through court websites, social media, educational outreach events and more. In providing the recommendations in this section, the Task Force kept in mind the role of courts in society and the public's need for access to justice and for accurate information about courts. The recommendations are meant to stimulate and invite exchange, enable a robust and cohesive court education and response system throughout Arizona, to advance our community's understanding of courts, and to ensure that courts have standardized, established ways to provide information and to address disinformation campaigns that target their court or the rule of law.

The Task Force recommends: [continuing series of numbers not letters]

- a) That individual courts designate a person or people to serve the function of a Public Information Officer who will be the liaison between an individual court and its judicial officers, court employees, local justice partners, the media, and the public;
- b) Establish and maintain a court-specific website or webpage to provide accurate information and access to justice 24 hours a day, 7 days a week through local and statewide resources;
- c) Establish and maintain at least one social media account (e.g., Facebook, Twitter, Instagram, YouTube) to keep the public and media informed about court events; to notify the community quickly and efficiently in emergencies; and as a tool to timely counteract disinformation, to provide accurate information, and to help the public better understand court policy and procedural issues connected to court-specific matters; and
- d) Conduct court-led learning events for the media.
- e) Produce court-based educational videos regarding media literacy and mis- and disinformation in the courts and our justice system. The videos could be aired to prospective jurors, placed on court websites, distributed through social media, broadcast for tour groups or at court-based speaker engagements, and provided to schools. Ideally, the AOC's education services division would produce the video(s).
- f) Create language that courts can include on their hold messages, where available.
- g) Prepare a court employee guide giving suggestions for when and how to respond to disinformation and noting when responding might further spread inaccurate information and cause more harm or confusion than good. This could be produced in tandem with the court's own education and training division, or the AOC's education services division.
- h) Provide a method by which the public and court staff can offer feedback and insights as to what they find to be troubling, misleading, or inaccurate about the court or its judiciary and why. This process should be anonymous unless the contributor opts otherwise. A designated court staff member, in consultation with their executive team or presiding judge, should make every effort to address and rectify legitimate concerns, or use the opportunity to clarify the fundamental concept of the role of justice and courts in today's society.
- i) Prepare a court-based "playbook." Like a continuity of operations plan, this guide could include sample response pieces, templated "letters to the editor," guidance for social media postings, and contact information for the Arizona Supreme Court, NCSC, local bar association offices, the

Conference of Court Public Information Officers, the American Board of Trial Advocates, et al. It could also include guidance on interacting with the media during a disinformation event. Information contained within the playbook could be taught in judicial education classes and included in learning materials. The NCSC is developing a broad-based playbook, and the American Bar Association produced, in 2018, its publication *Rapid Response to Fake News, Misleading Statements, and Unjust Criticism of the Judiciary*⁴⁰ which contains tips and recommendations for responding “rapidly and appropriately” to “inaccurate, unjustified, and simply false criticism of judges.” Both organizations have welcomed inquiries and have generously provided, when asked, their guidance and assistance to the courts.

- j) Incorporate advice from the aforementioned court-produced education and outreach materials, to generate and provide a public-facing mis- and disinformation mini-guide, online and in pamphlet form. This should be made available at law libraries, self-help centers, and through community partners. It should provide tips for researching and sourcing information delivered through social media and daily news broadcasts and publications, online or otherwise. A helpful outline for such a framework can be found in the 2013 article *How to Score a Perfect 10*⁴¹ by Jeanne Mejeur, writing on behalf of the National Conference of State Legislatures.
- k) Develop and implement courtwide standards and guidelines for court documents and communication, aka, court “branding” or “brand identity.” Branding provides a consistent, unique collection of fonts, colors, and seals to be used by court staff and its judiciary for all court-based communication. Branding would allow fake or doctored documents and records to more easily stand out as inconsistent with court standards. Often a city or county’s communications division can be called upon to help the court design its customized branding.
- l) Add prominent language to standardized court forms and other court-produced documents directing people to verify information from official court records. For example, a header or footer with language such as: “To verify the accuracy of this document, contact the court named above/below.”

Recommendation 3: 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 on 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

⁴⁰ <https://www.americanbar.org/content/dam/aba/administrative/american-judicial-system/2018-rapid-response-to-fake-news.pdf>

⁴¹ <https://www.ncsl.org/Portals/1/Testing%20the%20Credibility%20of%20Sources.pdf>

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 comment following the rule.

The Task Force recommends that the following Rules be amended as follows in underline: **[needs 2 numbers assigned]**

Rule 2.10(E)⁴²: *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.*

Rule 2.10⁴³, Comment 3: *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 4: 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 Task Force meetings included plentiful and robust discussions surrounding what constitutes “disinformation.” Those debates were mindful and protective of the cherished First Amendment protections of freedom of speech and of the press. 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

⁴² ACJC Rule 2.10(E) **[link to rule]**

⁴³ ACJC Rule 2.10, Comment 3 **[link to comment]**

information shared by those who do not recognize it as such, or with legitimate criticism, protest or censure of government actions, institutions or processes.”

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(A)*. 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 able 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 a third party. 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 boundaries set by the ACJC.

Allowing disinformation to occur unchecked can be destructive to the truth and reality. This can lead to mistrust of the judiciary, erode confidence in the courts, and ultimately pose a threat to the rule of law and democracy. 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.

[needs 3 numbers assigned]

The Task Force recommends 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; or other disciplines as appropriate.

The Task Force recommends that, particularly for the benefit of smaller jurisdictions, there should be a third-party or independent body "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.

The Task Force recommends that a comment to Arizona Code of Judicial Conduct Rule 2.10 should be published to provide guidance as to when and how such instances should be addressed.

Recommendation 5: Establish a Local/National Disinformation Study Network

Because of its year-long study, the Task Force recognizes a need to study the phenomenon of unfounded attacks on the judiciary over a more sustained period and as part of an effort that is both local and national. Participants would jointly agree on the time needed for the study, for example two or three 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 detailed information and a 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 the AOC encourage the National Center for State Courts to investigate the scope and possibility establishing a multi-state Local/National Disinformation Study Network consisting of cooperating groups from several states.

Recommendation 6: Establish a national, centralized point of contact to assist in identifying disinformation and having it flagged or, if warranted, removed while respecting the expression of individual opinions and the exercise of First Amendment rights.

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 within the greater society.

An individual, an individual court, and a state court system, invariably lacks the ability to quickly reach a liaison at a large social media or website provider for the review, flagging or, if warranted, 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 social media platforms.

AO 2019-114 suggested the Task Force consider a “centralized point of contact” that could “assist in identifying disinformation.” This point of contact could act as an ombudsman, supporting Arizona courts in responding to disinformation, flagging content for additional review or with a warning label, or removing disinformation when warranted, such as statements that could cause public harm.

The Task Force determined that timely intervention, the addition of a warning message to erroneous communications and, in some instances, the removal of disinformation, 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 Arizona's courts and legal system. If viable, the NCSC would provide direct assistance to courts by creating a program designed to respond to disinformation, not only on behalf of Arizona, but for courts nationwide.

[needs numbers assigned]

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

The Task Force further identified the American Board of Trial Advocates (ABOTA), a non-partisan national association of trial lawyers and judges, 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."

One ABOTA resource available online is "Protocol for Responding to Unfair Criticism of Judges."⁴⁴ This protocol addresses ABOTA's mission to "establish guidelines for each chapter of ABOTA" to "formulate and provide responses to misinformation." ABOTA has chapters in Tucson and Phoenix.

⁴⁴https://www.abota.org/Online/Resources/Judicial_Independence/Online/Resources/Judicial_Independence.aspx?hkey=03a0c0f8-1977-45f2-98ba-e0149ba44cd3

The Task Force recommends that the AOC partner with the American Board of Trial Advocates in countering disinformation in Arizona's courts.

The Task Force further recommends that Task Force members stay involved in the work required to bring the NCSC, ABOTA, and Arizona's courts together in establishing and pursuing these efforts.

Recommendation 7: [placeholder] **That courts take advantage of available technology and resources that can identify disinformation campaigns early enough to counter them with accurate information** (recomm will name or list specifics or examples or categories and that courts obtain opt-in contact information that courts can use as a distribution list for correcting disinformation)

Recommendation 8: Make federal public information available in Arizona regarding registrations 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 considering 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.

AO 2019-114 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 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 pursuing new state or local legislation requiring foreign agents to identify themselves or their content to the public.

The Task Force recommends that the AOC approach an Arizona Executive Branch agency by March 2021 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.

Recommendation 9: Engage in educational and strategic communication outreach programs and more extensive academic review of disinformation campaigns targeting courts and the court system, including a disinformation survey of the public.

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.

Survey Process

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.⁴⁵ 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.⁴⁶ 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.

Qualitative Analysis of Disinformation⁴⁷

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 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:

⁴⁵ See Appendix xxx.

⁴⁶ See Appendix xxx.

⁴⁷ For a full summary of results, including sample quotes from survey responses, see Appendix XXX.

- **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 wrongful behavior or motives. 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 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.** Several 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.

Through the interview process following up on the survey, the Task Force became aware of a website containing postings apparently directed at discrediting a large number of U.S. judges and potentially the judiciary as an institution. Further study is underway.

Except for the website noted above that purports to be a national comment-and-rating site for the judiciary in all 50 states,⁴⁸ Workgroup 1 found no clear evidence of coordinated disinformation campaigns. That is not to suggest that such a coordinated campaign aimed at the courts and the rule of law is not on the horizon. When discussing disinformation, there is abundant and clear evidence that malicious actors are intent on sowing discord and distrust in U.S. democratic institutions. The courts and the rule of law are prime targets for these campaigns and the judicial branch would be well-served by proactively preparing their responses.

The data points 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

⁴⁸ See [title of memo and attachments] at Appendix XXX

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.⁴⁹

Narrative Analysis of Disinformation

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 a 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 narratives where “justice” occurs outside the judicial system or narratives that say court involvement leads to injustice and unfairness, leading the person hearing the narrative to conclude that the judiciary does not uphold societal values.

Although the workgroup’s survey did not collect primary evidence of disinformation (i.e., the posts, videos, or articles themselves), the anecdotal evidence provided by the survey respondents points to repeating narrative elements. For example, 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 disproportionately negative effect on the public’s perception of courts when, in fact, countless 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.

Survey Conclusions

The first and strongest conclusion the workgroup drew from its survey was that knowledge of disinformation is not consistent across the judiciary in Arizona. This applies to perceptions of the severity

⁴⁹ See Appendix xxx (was Table 2 in draft) for details.

of the problem (responses of “no, haven’t seen any”), and understanding how to distinguish disinformation from litigants’ dissatisfaction and inaccurate reporting.

Further, the survey did not specifically evaluate public trust or mistrust of the judiciary, which was 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 for malicious purposes by disinformation actors, both foreign and domestic. 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 meddling in the 2016 U.S. presidential election, 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 U.S. 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’s yearlong term.

The Task Force recommends based on its survey results: [letters instead of numbers because these reaffirm the recommendations above]

1. That the AOC establish education and strategic communication outreach programs, including workshops to educate journalist and advocacy for civics education in schools. 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 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. That the AOC pursue on its own or with outside collaborators, a more extensive academic review of disinformation campaigns targeting courts and the court system, including a disinformation survey of the public. Although the Task Force survey achieved the goals directed in AO 2019-114, it raised other, novel questions. Survey responses indicated that misinformation is prevalent, potentially eroding public trust and confidence in the objectivity of courts, not because of malicious intent, but because of a lack of accurate information, consistently delivered.

III. Conclusion [new]

According to an analysis of the National Center for State Courts' 2019 *State of the State Courts* survey by consultants GBAO Strategies⁵⁰, Americans are "increasingly distrustful of many pillars of our society, including government," and admit to a "decreased confidence in all levels of the court system."

This decline in public trust was addressed, in part, by U.S. Supreme Court Chief Justice John G. Roberts, Jr. in his *2019 Year-End Report on the Federal Judiciary*⁵¹ who stated, "We should each resolve to do our best to maintain the public's trust that we are faithfully discharging our solemn obligation to equal justice under law... in our age, when social media can instantly spread rumor and false information on a grand scale, the public's need to understand our government, and the protections it provides, is ever more vital."

Chief Justice Roberts' comments are a call to action and a window of opportunity. Through proactive and consistent measures, Arizona's courts can work collectively to counter disinformation, educate and inform, and regain or strengthen the public's trust and confidence in courts and the protections they uphold.

Courts must actively inform the public about court processes and procedures. Recognizing the power and influence of online information, courts can help the public make better-informed decisions about what they encounter online, and to be more critical consumers of online content. Courts must do better

⁵⁰ <https://www.ncsc.org/topics/court-community/public-trust-and-confidence/resource-guide/2019-state-of-state-courts-survey>

⁵¹ <https://www.supremecourt.gov/publicinfo/year-end/year-endreports.aspx>

explaining rulings, procedures, and requirements so those who are unaware of the nuances of the law do not disparage the court, or an individual judge's integrity, based solely on the outcome of a matter.

Courts must use their untapped or unexplored resources in responding to or rejecting inaccurate criticism of courts or the judiciary while respecting the expression of individual opinions and the exercise of First Amendment rights. This balanced approach maintains criticisms that have the power to improve the judicial system while guarding against campaigns intended to do harm.

In her 2019 TED talk, *How You Can Help Transform the Internet Into a Place of Trust*⁵² Dr. Claire Wardle, an expert on social media and former Research Fellow at the John F. Kennedy School of Government at Harvard University, cautioned: "People talk about taking down 'problematic' or 'harmful' content, with no clear definition of what that means." In any campaign to counter disinformation, courts must be conscious that, as Dr. Wardle mentions, "a well-meaning decision by one person is outright censorship to the next."

Courts must recognize that their societal role as unbiased, impartial, and fair arbiters of the law requires consistent, truthful, accurate messages. Courts must also ensure that their audience – litigants, reporters, and the public – understand their communication. Nuanced legal issues and specific obligations and restrictions placed on the judiciary through laws, rules, codes, and canons must be clearly explained.

In concluding his report, Chief Justice Roberts noted, "I ask my judicial colleagues to continue their efforts to promote public confidence in the judiciary, both through their rulings and through civic outreach. We should...remember that justice is not inevitable and each resolve to do our best to maintain the public's trust that we are faithfully discharging our solemn obligation to equal justice under law." Arizona's Task Force on Countering Disinformation echoes those sentiments and encourages all courts – in Arizona and beyond – to pursue and uphold these ideals.

DRAFT for 9/16/2020 Task Force meeting v2

⁵² https://www.ted.com/talks/claire_wardle_how_you_can_help_transform_the_internet_into_a_place_of_trust