



Task Force on Countering Disinformation

[date], 2021

Concluding Report

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EXECUTIVE SUMMARY

Continuation of the Task Force

The Arizona Supreme Court’s Task Force on Countering Disinformation was established in 2019 and conducted its initial work of developing recommendations to maintain public trust and confidence in the judiciary throughout 2020. The task Force continued its work through 2021, researching options, connecting with stakeholder groups, and implementing 2020’s recommendations.

In 2020, the Task Force made 27 recommendations in nine broad categories. Throughout 2021, the Task Force addressed each of those recommendations. Some recommendations were consolidated into others, but ultimately, the Task Force followed up on or implemented all its original recommendations. In 2021, the Task Force was recognized by the Arizona Supreme Court with a Strategic Agenda Award for maintaining public trust and confidence.

Creation and Purpose of the Task Force

To remind the reader of the Task Force’s beginnings, Arizona Supreme Court Chief Justice Robert Brutinel’s strategic agenda for Arizona’s courts, *Justice for the Future, Planning for Excellence*,¹ includes a focus on promoting public trust and confidence in courts and awareness of the role courts serve in society. Arizona’s court leaders recognize there are people, organizations, and foreign and domestic entities that intentionally instigate or seed disinformation² into the information environment³ to undermine public confidence in this country’s institutions, including courts. It seems 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 these efforts will continue and tracing their origins will become more difficult.

Information about local and national experiences with, and responses to, misinformation and disinformation were a regular part of the discussion at meetings of the Task Force on Countering Disinformation (“Task Force”) and its workgroups. At the same time, members of the

¹ *Justice for the Future, Planning for Excellence*, at <https://www.azcourts.gov/AZ-Courts/Strategic-Agenda>

² For this Report, the Task Force defined disinformation as “False, inaccurate or misleading information that is deliberately spread to the public with the intent to undermine the democratic process, sow discord, profit financially, or create distrust of government institutions or public officials. Disinformation should not be confused with misinformation, which is false information shared by those who do not recognize it as such, or with legitimate criticism, protest or censure of government actions, institutions or processes.”

³ “Information environment” is used here to capture all forms of communication, including traditional print, radio, and TV media, social media, other online outlets, pamphlets, artificial intelligence and bots, in-person discussions and beyond.

public who attended Task Force meetings commented on the need for the Task Force to recognize First Amendment rights and to protect robust debate, differences of opinion, and legitimate criticism of courts and of the government's actions. The Task Force wholeheartedly endorses this goal.

Indeed, the ideals of free speech, open courts, criticism and debate, in addition to transparency and accountability, appear in the first paragraph of Administrative Order 2019-114 ("AO 2019-114")⁴ that established the Task Force. This report and recommendations ("Report") seeks to promote free speech, the right of redress of grievances, and the ability to voice sincerely held differences of opinion, while acknowledging groups exist whose intent is to monopolize and degrade the debate for their own purposes of eroding trust and confidence in courts and the judicial system.

To address these issues in Arizona, on September 18, 2019, Chief Justice Brutinel issued AO 2019-114, establishing the Task Force. Chief Justice Brutinel ordered that the Task Force may:

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

⁴ In the Matter of: Establishment of the Task Force on Countering Disinformation, at <https://www.azcourts.gov/Portals/22/admorder/Orders19/2019-114.pdf>.

- 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 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.” That original Report is available at <https://www.azcourts.gov/Portals/74/DisinformationTF/CDTFReport%20FINAL2020.pdf>.

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SUMMARY OF IMPLEMENTED RECOMMENDATIONS

I. Background

From the nine broad recommendations, the Task Force made 27 total recommendations for countering disinformation. Some of the recommendations were to create partnerships, to track disinformation trends, and others called for tangible materials, such as written handouts and instructional outreach. The broad category recommendations include research, partnerships, outreach, and judicial branch resources.

The Task Force's research included tracking trends in misinformation and disinformation and the technology to follow and respond to those trends. The partnerships category involved connecting with a representative from the local American Board of Trial Advocates (ABOTA), the American College of Trial Lawyers (ACTL), The National Center for State Courts (NCSC), the Arizona Judges Association, the Arizona Bar Foundation, the Public Information and Messaging workgroup of the Arizona Supreme Court's Commission on Access to Justice, the Arizona Council for Social Studies, and the Arizona Department of Education's Civic Education and Community Engagement program. The Task Force's outreach efforts included connecting with the Arizona Broadcasters Association, creating a one-page information sheet on misinformation and disinformation in English and Spanish, redesigning the Arizona Supreme Court's outreach website, and developing a feedback survey courts can use locally. The internal judicial branch resources that were developed include a court branding guide, a disinformation playbook, media contacts, a guide to reporting potential disinformation to social media platforms, and a list of designated court public information officers and their courts' websites and social media outlets. The Task Force's specific updates will follow the original recommendations from the October 2020 Report.

The October 2020 Report asserted:

...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 the justice system must adapt accordingly. To achieve this, courts need honest, dedicated critics and monitors of court proceedings. Courts must also oppose malicious campaigns, foreign and domestic, intended to weaken the U.S. through discrediting and defaming courts as a co-equal branch of government. Considering the current inadequacy of civic education and

understanding, the Task Force asserts that proactive measures are necessary to achieve this goal of protecting the rule of law.

These assertions remain true, as the Task Force noted that attacks on the judiciary continued throughout 2021, directed from private groups and individuals as well as from public officials. When outcomes are unfavorable to an individual, a cause or movement, judges and courts continue being characterized by some as partisan, corrupt, and as having an agenda. Such comments in the media are rarely countered with reminders that the judicial branch was designed to operate with fidelity to the law and without regard to popular opinion or majority demands.

Like the Task Force's October 2020 Report, implementation in 2021 focused on education and community outreach, encouraging judges and judicial branch staff to more effectively reach and engage their neighbors. This direct community outreach includes speaking engagements and in providing clear written explanations in plain English. The Task Force correctly viewed the October 2020 Report as a first step. This Concluding Report is another step, identifying specific materials the Task Force has prepared and what courts, judges, and employees can do to maintain public trust and confidence going forward.

II. Task Force Recommendations

The original Task Force recommendations follow, with information on how the 2021 Task Force implemented or followed up on the recommendation.

1. That the Administrative Office of the Courts empanel a “redesign team” to redesign the structure of Our Courts Arizona (OCA) and develop ways to best leverage OCA to provide support and assistance to the many organizations that offer civic education resources throughout the state.

The Task Force developed a redesign of the former “Our Courts Arizona” community outreach program, renaming the program “Community Outreach.” This rebranding makes the intent recognizable at a glance and encompasses outreach and education in its various forms and applications. The updated website will reflect a more contemporary design of tiles, links, videos, and other intuitive resources for on-demand content and to make it easier for the public to connect with Arizona's courts.

2. That the redesigned OCA recommend a liaison to the Arizona Council for Social Studies (ACSS) and the Arizona Department of Education's Civic Education and Community Engagement Program (CE2) or any other body whose mission fits with the mission of OCA.

The Task Force completed this goal by having a liaison attend regular meetings of ACSS and CE2 throughout 2021. This partnership is anticipated to continue going forward, either with a representative from Arizona's Administrative Office of the Courts, or with a representative from one of Arizona's court public information officers.

3. 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.

The redesigned Community Outreach website will allow judicial branch employees to volunteer for outreach and for schools and community groups to request a judicial branch presenter.

4. That individual courts designate a person or people to serve the function of a public information officer (PIO) who will be the liaison between an individual court and its judicial officers, court employees, local justice partners, the media, and the public.

[enter update. TF identified individual court PIOs through its survey of judges and court administrators. The AOC will maintain that list]

5. That every court 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 or statewide resources.

[enter update. The TF made this recommendation to court leaders through email, meetings, and the judicial conference. Most courts have a website – either their own or through a city or county account]

6. That every court establish and maintain at least one social media account, such as Facebook, Twitter, Instagram, or 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 policies and procedures. Even if an individual court cannot immediately use these social media channels, it should secure them to prevent the name being taken by others.

[enter update. TF made recommendation. Many have something they can use]

7. That the AOC conduct court-led learning events for the media and that individual courts do so to the extent possible.

[enter update. WG chair KLG and AOC PIO are coordinating this for early 2022]

8. Producing court-based educational videos regarding media literacy and misinformation and disinformation in the courts and 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 speaking engagements, and provided to schools. The production of these videos could be through the AOC, the AZFLSE, individual courts, grant-funded projects, or others' content approved for republication.

[enter update. Some products are in development or will be with stakeholders]

9. That, where available, courts include media literacy messages on their telephone on-hold messages. For example, encouraging listeners to contact courts directly to verify information.

[enter update. TF made this recommendation to court leadership]

10. Preparing a court employee guide giving suggestions for when and how to respond to disinformation and identifying when responding might accentuate or further broadcast inaccurate information and cause more harm or confusion than good. Resources for producing this include a court's internal education and training division, if any, the AOC's education services division, the NCSC, or CCPIO.

[enter update. TF made recommendation to include this info in new employee orientation. Recommended to court leadership and to AOC Ed Services]

11. That courts have a way by which the public and court staff can offer feedback on what they find troubling, misleading, or inaccurate about a court or its procedures. A designated court staff member, in consultation with judicial leadership,⁵ should resolve legitimate concerns and use the opportunity to clarify the fundamental concept of the role of justice and courts in society. An anonymous submission option is recommended.

[enter update. Options for QR code survey in courts were recommended]

12. That the AOC create a court-based “playbook” incorporating the concepts in this Report. Like a continuity of operations plan, this playbook could include sample response language, templated “letters to the editor,” guidance for social media postings, guidance on interacting with the media in response to a disinformation incident, and contact information for the AOC, NCSC, local bar associations, CCPIO, ABOTA, and others. Information from the playbook could be taught in judicial education classes and included in learning materials. Arizona’s playbook should incorporate work done in this field by the NCSC and the ABA’s 2018 publication, *Rapid Response to Fake News, Misleading Statements, and Unjust Criticism of the Judiciary*⁶ which contains tips and recommendations for responding “rapidly and appropriately” to “inaccurate, unjustified, and simply false criticism of judges.”

[enter update. WG is finalizing the playbook. AOC will maintain going forward]

13. Incorporating information from the resources in this Report into an online and print mini guide to recognizing misinformation and disinformation as it applies to the judiciary. The mini guide should be made available at law libraries and public libraries, self-help centers, and through community partners. It should provide tips for researching and verifying information received through social media and daily news broadcasts and publications, online or otherwise. A helpful outline for developing a mini guide appears in Jeanne Mejeur’s 2013 article, *How to Score a Perfect 10*.⁷

[update. TF completed one-pager in English and Spanish. AOC will maintain and distribute.]

⁵ “Judicial leadership” here refers to an individual court or department’s executives. These could be the presiding judge, an elected clerk, directors, chief probation officers, or others.

⁶ <https://www.americanbar.org/content/dam/aba/administrative/american-judicial-system/2018-rapid-response-to-fake-news.pdf>

⁷ From the National Conference of State Legislatures:
<https://www.ncsl.org/Portals/1/Testing%20the%20Credibility%20of%20Sources.pdf>

14. That where individual courts can do so, they develop and implement court-wide standards and guidelines for court documents and communication, commonly called “branding” or “brand identity.” Branding provides a consistent, unique collection of fonts, colors, and seals applied to court-provided communication. Branding makes fake or fraudulent documents and records easier to identify as inconsistent with court standards. A city or county’s communications division can often help the court design its branding.

[update. The AOC will update and maintain this resource.]

15. That the AOC and individual courts 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.”

[update. The TF made this recommendation to court leadership and provided sample text]

16. Rule 2.10(E):⁸ *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 unsubstantiated allegations or attacks upon the judge’s reputation from whatever source in writing, via social media or broadcast media or otherwise.*

The Arizona Supreme Court adopted the Task Force’s proposed rule and comment changes on August 25, 2021, with a January 1, 2022 effective date. The markup language is available at <https://www.azcourts.gov/Portals/20/2021%20Rules/R-21-0001%20Rules%20Order.pdf>.

Conforming changes to the Arizona Code of Judicial Administration as they apply to elected clerks of court and to judicial branch employees will go before the Court in December 2021 with an effective date of January 1, 2022 if approved by the Court.

⁸ ACJC Rule 2.10(E):

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

17. Rule 2.10,⁹ 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 unsubstantiated allegations or attacks upon the judge’s reputation.*

The Arizona Supreme Court adopted the Task Force’s proposed rule and comment changes on August 25, 2021, with a January 1, 2022 effective date. The markup language is available at <https://www.azcourts.gov/Portals/20/2021%20Rules/R-21-0001%20Rules%20Order.pdf>.

Conforming changes to the Arizona Code of Judicial Administration as they apply to elected clerks of court and to judicial branch employees will go before the Court in December 2021 with an effective date of January 1, 2022 if approved by the Court.

18. That a Rapid Response Team be coordinated through a law school clinic, bar association, or other entity familiar with court-related issues and that would be in contact with courts and judicial branch individuals, but with independent authority and controls. The recommended makeup of a Rapid Response Team would include 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.

[update that the Arizona Judges Association will take on the role of Rapid Response Team for Arizona’s judiciary. The AJA will remain in contact with the AOC’s PIO to identify and respond to disinformation and the AOC PIO will remain in contact with NCSC for updates and tracking.

19. 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.

This recommendation was completed through recommendations 16 and 17, with proposed updates to the codes of conduct for judges, clerks, and judicial branch employees. Part of the changes to the judicial code included removing references to pending or impending matters,

⁹ ACJC Rule 2.10, Comment 3:

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

clarifying that misinformation and disinformation can be responded to or corrected at any time that would otherwise be appropriate under the codes of conduct.

20. That the AOC encourage and seek the participation of the NCSC to investigate the scope and the possibility of establishing a multi-state Local/National Disinformation Study Network consisting of cooperating groups from several states.

[update. The Task Force confirmed with the NCSC that Arizona remains available to coordinate and participate in further misinformation and disinformation studies.]

21. That the AOC extend its partnership with the NCSC and establish a workgroup specifically tasked to work with them in this critical endeavor.

Like recommendation 20 above, the Task Force confirmed with the NCSC that Arizona remains available to coordinate and participate in a workgroup tasked with further review of misinformation and disinformation issues, locally and nationally.

22. That the AOC partner with ABOTA in countering disinformation in Arizona's courts.

[update. The Task Force established a local connection with ABOTA and ACTL. In October 2021, a judicial decision in a controversial issue drew criticism from the executive branch of government. ACTL issued a statement in response. See Appendix xx (add ACTL letter)]

23. 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.

[update. Task Force members have individually committed to taking part in follow-up efforts after the Task Force's conclusion. Examples include the Rapid Response Team efforts of the Arizona Judges Association, considering statements like the one published by ACTL in Appendix xx, and taking part in community outreach efforts.]

24. That the Task Force continue monitoring the ongoing technology developments and long-term solutions for identifying and countering disinformation campaigns.

[update. Reviewed for technology throughout 2021. Add Fred's language here, if any.]

25. That the AOC, and individual courts if applicable, establish an opt-in system for the public to provide contact information such as email addresses or a phone number to receive text messages, thus allowing Arizona’s courts to more easily and quickly share information and to correct inaccuracies or disinformation.

[update. The AOC is doing this through email updates the public can sign up to receive, plus social media outreach. Other courts are doing or considering similar outreach.]

26. 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.

[update. The Task Force contacted the AZ Dept of Homeland Security, who contacted the AZ DPS to further review what information could be drawn down, if any, and whether the effort to maintain would justify the public demand and utility.]

27. That the term of Arizona’s Task Force on Countering Disinformation be extended through December 2021.

The Task Force’s term was extended for the 2021 calendar year to complete its review and implementation of its recommendations. This Concluding Report summarizes the outcomes of that additional review and implementation.

III. Conclusion

The conclusion from the Task Force’s October 2020 Report citing the NCSC’s 2019 annual *State of the State Courts* survey,¹⁰ remain: Americans are “increasingly distrustful of many pillars of our society, including government,” and admit to a “decreased confidence in all levels of the

¹⁰ www.ncsc.org/survey

court system.” The proposed solutions from the 2020 Report remain the recommended course of action for courts:

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 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 encourages constructive criticism that can improve the judicial system while guarding against campaigns intended to do harm.

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.

Differences of opinion and disagreement remain between the judicial branch and individuals and interest groups. The need to continue civil debate and to pursue improvements to the judiciary also remain. Through improved outreach, clearer and more prevalent communication from courts, better recognition of misinformation and disinformation, and faster responses to misinformation and disinformation, Arizona’s judicial branch is poised to interact more effectively with the communities it serves.