

## **Video Remote Interpreting in the Courts Threatens Civil Liberties** *Language Access Professionals Seek Guarantees Against Misuse*

Court administrators, advised by the Administrative Office of the Courts (AOC), are demanding that employee interpreters accept the implementation of Video Remote Interpreting (VRI), *carte blanche*, as part of their contract negotiations. The California Federation of Interpreters (CFI), which represents court interpreter employees, is open to discussing appropriate applications of VRI. But CFI has very serious concerns about how VRI may be misused.

Studies and pilot programs in other jurisdictions have shown that VRI is inappropriate for many court purposes and is not an acceptable substitute for live, onsite interpreters. The AOC has not adequately studied VRI, however, and does not have a clear understanding of its limitations.

VRI has been shown to be slower, more stressful and fatiguing, less accurate, and more prone to confusion, complications, and delays. “All forms of video-mediated interpreting were found to magnify known problems of (legal) interpreting,” found a study from the University of Surrey.<sup>1</sup> Yet another study found that “the number of serious interpreting problems was generally higher in the forms of video-mediated interpreting compared to face-to-face interpreting.”<sup>2</sup>

VRI threatens to undermine judges’ and attorneys’ communications with Limited English Proficient (LEP) parties, victims, witnesses and defendants, and to greatly restrict LEP individuals’ due process rights and access to the courts.

Among our concerns:

### ***VRI is slower, inefficient and of limited use.***

-- Interpreters must interpret everything that’s said by everyone. When physically present in the courtroom, an interpreter can follow the flow of information from multiple speakers in *simultaneous mode*, thereby allowing proceedings to move along without disruption. But remote interpreting requires a highly controlled environment, free of the chaos and noise of the typical courtroom. Most remote interpreting setups only allow for consecutive interpretation, in which just one person can speak at a time and speakers must stop every few sentences to allow for interpretation to take place. Remote interpreting is unsuitable for hearings that are interactive or involve extemporaneous conversation. Even if implemented under the right conditions, *consecutive interpretation* -- the mode generally required by VRI -- takes 20% more time than the *simultaneous mode* used by onsite interpreters for the vast majority of court proceedings.<sup>3</sup>

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<sup>1</sup> Sabine Braun, S. and Judith L. Taylor (Eds), “Videoconference and Remote Interpreting in Criminal Proceedings,” University of Surrey (2011), <http://www.videoconference-interpreting.net/BraunTaylor2011.html>.

<sup>2</sup> Barbara Moser-Mercer, “[Remote interpreting: assessment of human factors and performance parameters](#),” Joint Project International Telecommunication Union (ITU) and Ecole de Traduction et d’Interpretation, Université de Genève (2003).

<sup>3</sup> <http://www.openstarts.units.it/dspace/bitstream/10077/7381/1/Napier.pdf>, p. 228.

***VRI significantly impairs an interpreter's ability to provide complete and accurate renditions.***

-- Studies have also shown that VRI is more stressful and fatiguing, and thus leads to more errors, omissions, and breakdowns in communications. It's harder to hear when interpreting remotely, and harder to capture gestures and other nonverbal cues that provide important meaning and context. An interpreter who is not physically present is less able to assess what she is missing and request a repetition or otherwise remedy the situation. And remote interpreters aren't able to prepare adequately for an interpretation in the first place, because they aren't likely to have advanced access to basic information on the cases they interpret for, nor to be able to conduct pre-appearance interviews or to instruct LEP persons on how to communicate through an interpreter.

***Onsite interpreters are necessary to protect LEP persons' due process and access to justice.***

-- A great deal of essential communications related to court matters takes place off the record and outside the courtroom, in hallways and interview rooms. Without easy, quick access to onsite interpreters, many of these communications would break down or not take place at all. Inside the courtroom, the presence of onsite interpreters guarantees that LEP individuals are privy to everything that's being said, facilitates confidential conversations between attorneys and defendants, parties or witnesses, and ensures that LEP court users are able to ask questions and to be heard in a way that VRI can never hope to do. Without direct access to an interpreter who is present with the parties, an LEP person's participation and understanding of the proceedings can be significantly impaired.

In our experience, courts have demonstrated an alarming lack of awareness of the challenges in providing meaningful access, and have not been diligent about ensuring that competent interpreters are used and that statutes and rules related to language access are followed.

What's more, the AOC hasn't conferred with interpreters, the applied linguistics experts who provide language access in courts everyday, about how to implement VRI - despite a strong suggestion from the Department of Justice to "seek interpreter input in any efforts to develop a video remote interpreting program."<sup>4</sup> Interpreter representatives have proposed an open and transparent process to establish appropriate guidelines and address VRI's limitations. So far, however, decisions at the AOC are being made behind closed doors by an ad hoc committee that doesn't include stakeholders. Local courts will only agree to negotiate with court interpreters over the terms for VRI after the guidelines have been established, and in a process that would allow the courts to simply impose their plans.

Given the AOC's and local courts' track records, we have serious misgivings about their ability to develop an appropriate remote interpreting plan that includes strict limits on the contexts in which it may be used, and appropriate equipment, protocols and training of *all* courtroom personnel to ensure that remote interpreting is effective and doesn't impede LEP parties' rights to due process and equal access to justice under the law.

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<sup>4</sup> Deeana Jang, Section Chief, Federal Coordination and Compliance, U.S. DOJ Civil Rights Division, 5/22/13 Letter to the California Chief Justice, the Administrative Office of the Courts, and Los Angeles County Superior Court, <http://www.calinterpreters.org/wp-content/uploads/2013/06/DOJ-Investigation-171-12C-31-5-22-13-Letter-2.pdf>, p. 9.