
Video Remote Interpreting (VRI) for the Deaf and Hard of Hearing in California Courts: A Fabricated Success Story



**A Report on the Judicial Council of California's
Mismanagement and Misrepresentation of VRI as a
Technology Innovation that Improves Access to Justice**

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The California Federation of Interpreters (CFI, Local 39000) is a professional association of court interpreters working across the state as staff and freelance legal interpreters. CFI is the exclusive labor representative of spoken language staff interpreters under the Trial Court Interpreter Act. Contact us at info@calinterpreters.org

I. Executive Summary

The Judicial Council of California has pointed to its Video Remote Interpreting (VRI) program for American Sign Language (ASL) as a successful model for expanding the use of VRI in California's trial courts to spoken languages. The ASL VRI Pilot Project represented California's first foray into using VRI for court proceedings and, according to the Judicial Council, "established that VRI can be used to provide meaningful language access in a variety of courtroom environments if done with appropriate controls."¹ A closer look at how the courts have implemented VRI for ASL, however, reveals a slew of critical concerns about the Judicial Council's management of the program and VRI's impacts on the due process rights of linguistic minorities.

CFI conducted an exhaustive investigation into the California courts' use of VRI for ASL. We found that, if anything, the pilot project and subsequent program established the opposite of what the Judicial Council claimed: It proved that the courts *cannot* be relied upon to exercise "appropriate controls" over VRI without *mandatory* rules and procedures and rigorous, independent oversight.

CFI's findings are based on analyses of a number of sources, including raw data and internal reports and communications obtained by CFI through formal public information requests to the Judicial Council,² interviews with ASL interpreters providing VRI services to the courts, and review of the Judicial Council's *Strategic Plan for Language Access in the California Courts* (Language Access Plan, or LAP, for short), reports and meeting notes from various Judicial Council task forces and subcommittees, and resources posted on the California Superior Court's Web site. CFI evaluated the Court's ASL VRI Pilot Program (conducted from November, 2011, through December, 2012³) as well as trial courts' use of VRI for ASL since the Judicial Council deemed the pilot a success and issued its *Recommended Guidelines for Video Remote Interpreting (VRI) for ASL-Interpreted Events* in 2012.

¹ *Strategic Plan for Language Access in the California Courts*, Judicial Council of California, 2015, pp. 37-8.

² CFI submitted a request for information to the Judicial Council's Public Access to Judicial Administrative Records (PAJAR) on May 8, 2015 (request #001368), pursuant to CA Rules of Court, Rule 10.500, on public access to judicial administrative records, and a follow-up request on October 13, 2015. Responsive records were received on July 9, 2015, July 17, 2015, November 24, 2015, and February 18, 2016. These included all records, evaluations, emails and reports pertaining to the Court's ASL VRI pilot project and program. To the best of our knowledge, these include all the data that the Judicial Council relied on to validate the success of the ASL VRI program.

³ The *Strategic Plan for Language Access in the California Courts* states on p. 37 that the pilot was conducted over a six-month period in 2010 and 2011. This does not correlate with documents CFI obtained via PAJAR. The pilot was originally slated to last six months, but was extended. A document titled "Pilot Cost Worksheet" reflects the dates stated in this report. In a letter to CFI dated Nov. 24, 2015, PAJAR confirmed that the worksheet "represents the most complete report of all VRI events conducted during the pilot program."

Our investigation led to the following conclusions:

- The Judicial Council inflated the ASL VRI Pilot Project's success based on insufficient data and a selective analysis of the information gathered.
- The Court's ASL VRI program has not significantly expanded access to certified ASL interpreters in courtroom proceedings.
- The courts used VRI for hearings that were not appropriate under the guidelines because they were too long or too complex to provide meaningful access for deaf and hard of hearing court users.
- Judicial Council staff have downplayed and ignored problems identified during and since the pilot that impact the language access rights of deaf and hard of hearing court users. These issues have not been acknowledged or adequately addressed in any of the Judicial Council reports and publications pertaining to VRI.
- Training of bench officers and court staff has been inadequate, the Judicial Council's own recommended guidelines are not followed consistently, and the courts are not collecting data on or monitoring ASL VRI.
- Ongoing evaluations are not being conducted. There is no mechanism to obtain feedback from stakeholders – deaf and hard of hearing court users, interpreters, attorneys and bench officers – about their experiences with VRI.
- There's been no genuine analysis of how VRI impacts the due process rights of deaf and hard of hearing parties.
- The Judicial Council analyst charged with overseeing the ASL VRI pilot and program actively promoted using VRI for inappropriate proceeding types, in violation of the Judicial Council's own recommended guidelines.
- The same administrator improperly pressured interpreters into withdrawing complaints reporting problems with the courts' use of VRI.
- VRI has not been widely used for ASL, and its use appears to have declined to the point of near obsolescence after the first five months of the Court's pilot. The Judicial Council has failed to produce evidence of VRI use for courtroom proceedings since December of 2012.

II. Poor Oversight, Doctored Outcomes

The Judicial Council was less than rigorous in its tracking and evaluation of the ASL VRI Pilot Project. Documentation was rife with missing and conflicting information and the data collected was much too limited to provide sufficient basis for proclaiming the viability of VRI in judicial settings, or to support the claim that VRI has successfully expanded access to certified interpreters for ASL.

Nonetheless, a bona fide analysis of the available data on actual usage, program evaluations and the Judicial Council's unsuccessful efforts to expand usage raises numerous important concerns.

Padding the Numbers and Breaking the Rules

CFI found that the Judicial Council reported the number of events during the pilot project that were appropriate for VRI in a misleading way, distorting the facts to imply that VRI was needed and used far more than was actually true. In a document titled "ASL VRI Pilot Outcomes," the Judicial Council failed to say how many times VRI was actually used for ASL hearings during the pilot, reporting instead that "82-83% of the 333 events needing ASL interpretation, during the pilot, by pilot courts, were VRI appropriate." This gives the skewed impression that VRI was used far more frequently than was the case. The data the Judicial Council relied on to reach this conclusion shows that VRI was only scheduled for 45 events and used for only 39.⁴

In fact, the data invalidates the assertion that 82-83% of ASL events during the pilot "were VRI appropriate" because the vast majority were either covered by in-person interpreters or could have been: It is widely recognized that in-person interpreters are able to provide more reliable and comprehensive language access services in person rather than over VRI; the Judicial Council's own ASL VRI guidelines (issued in 2012) and its subsequent Language Access Plan both specify that an event is *not appropriate* for VRI when an in-person interpreter is available. The data shows that VRI was actually used in approximately 13.5% of cases requiring ASL interpreters (45 of 333) during the pilot project. It is possible that in-person interpreters could have covered even more than 86.5% of ASL events during the pilot, as there is little if any evidence in the data provided by the Judicial Council that coordinators made any efforts to schedule a certified interpreter to provide services in person prior to scheduling an event for VRI.

⁴ CFI requested clarification multiple times from the Judicial Council about the number of ASL VRI events during the pilot and it repeatedly responded saying it provided all documents responsive to our requests. PAJAR's Nov. 24, 2015, response stated that "[t]he spreadsheet entitled, 'VRI Pilot Cost Worksheet' represents the most complete report of all VRI events conducted during the pilot program." The worksheet reflects only 45 VRI events scheduled during the course of the pilot. Five did not proceed due to "no-shows;" another didn't use VRI because the party agreed to proceed without interpreter services.

There is evidence that Judicial Council staff encouraged trial courts to violate the Judicial Council's own guidelines and use VRI improperly. Indeed, CFI determined that of the 45 events for which the courts scheduled VRI, some were not appropriate for VRI for reasons other than the lack of an available in-person interpreter. (See "Guidelines Disregarded, Access Curtailed," below.)

What's more, there was a drastic drop-off in VRI use after the first five months of the pilot program. Forty-two of the 45 events scheduled for VRI took place between November of 2011 and April, 2012. No more VRI events were logged until eight months later, when three ASL VRI events took place over an eight-day period in late December, 2012, in Stanislaus County. If VRI is needed, as the Judicial Council claims, to provide ASL interpretation services to deaf and hard of hearing court users who otherwise would not receive the services of a certified interpreter, then how to explain the virtual freeze in VRI use after the initial phase of the pilot project?

Another fallacy propounded by the Judicial Council in its pilot project "outcomes" is that the "likelihood of using a court certified interpreter went up dramatically with VRI."⁵ This claim was incorporated into the Language Access Plan in support of expanding VRI's use to spoken languages: The LAP alleges that the ASL VRI pilot, "improved access to court certified interpreters."⁶ But this claim, too, is unfounded.

Again, there is no evidence that VRI was only used when the alternative would have been no interpreter, or to use a non-certified ASL interpreter. Records indicate the contrary: Of the 48 evaluations received from interpreter coordinators, only one reported that the person likely to be scheduled for in-person interpretation would not have been court certified. Sixteen reported that the person who would've been scheduled for in-person interpretation was, indeed, certified.⁷

The Judicial Council's "VRI Pilot Cost Worksheet," which it says "represents the most complete report of all VRI events conducted during the pilot program,"⁸ reports that there were only four events for which a court certified interpreter would not have been available without VRI.

⁵"ASL VRI Pilot Outcomes," Judicial Council of California.

⁶ *Strategic Plan for Language Access in the California Courts*, Judicial Council of California, 2015, p. 37. Also see the Joint Working Group for California's Language Access Plan's Oct. 21-22, 2014, "VRI related proposed changes to the July Publicly Posted Plan" (*sic*), p. 1.

⁷ That answer was left blank in 31 of the 48 evaluations.

⁸ PAJAR's Nov. 24, 2015, response to CFI's Oct. 13, 2015, follow-up Request for Judicial Administrative Records #001368.

Guidelines Disregarded, Access Curtailed

There are considerable differences interpreting over VRI compared to in person. VRI has been shown to lead to quicker interpreter fatigue times (deterioration begins after 15-18 minutes)⁹ and greater and more significant interpreting errors.¹⁰ Because interpreters are separated from other parties, they are less able to rely on visual cues, less able to address problems with sound or cross-talk or a variety of other impediments, less able to elicit repetitions or clarifications, less able to ensure they're given even the most basic information and context about a case ahead of time, or to ascertain a party's language needs and patterns, or to prepare the person on how to work with an interpreter.

After the pilot program, the Judicial Council adopted generally sound "recommended" guidelines for ASL VRI which, if respected, would help mitigate some of these problems and better ensure ethical interpreting standards, fairness, access and meaningful participation for deaf and hard of hearing court users. As per those guidelines, appropriate events for VRI include:

- *Events where a court-certified ASL interpreter is not available onsite.*¹¹
- *Events that are less than 30 minutes in duration and not complex.*
- *Events with no testimony or cross-examination ...*¹²

The *Recommended Guidelines* also state that:

Courts should conduct staff and judicial officer training on the use of these guidelines as well as the use of the court's VRI equipment before introducing VRI into courtrooms.

*Courts should provide case documents to the interpreter prior to a VRI event (even 10 to 15 minutes prior is helpful).*¹³

⁹ Barbara Moser-Mercer, "Remote interpreting: Assessment of human factors and performance parameters," joint project International Telecommunication Union (ITU)-Ecole de Traduction et d'Interpretation, Université de Genève (ETI), May 19, 2003. Available at <http://aiic.net/page/1125/remote-interpreting-assessment-of-human-factors-and-performance-parameters/lang/1>. Note that this study was conducted using the consecutive interpreting mode. Simultaneous interpretation has been shown to lead to quicker fatigue times.

¹⁰ See, for example, "Keep your distance? Remote interpreting in legal proceedings: A critical assessment of a growing practice," Sabine Braun, in *Interpreting*, 15:2 (2013), John Benjamins Publishing Company, pp. 200-228.

¹¹ CFI's position is that this guideline is too broad because it fails to define what "available" means: An in-person interpreter won't be available if a court doesn't bother to schedule one, or if a clerk doesn't inform coordinators that one is needed, or if an interpreter is covering a matter in another part of the building or county and could, indeed, provide services so long as the court were willing to wait briefly.

¹² *Recommended Guidelines for Video Remote Interpreting (VRI) for ASL-Interpreted Events*, Judicial Council of California, 2012, p. 3.

¹³ *Ibid.*, p. 4.

The *Guidelines* say that:

An individual analysis must be made of the linguistic and legal demands of the case before recommending VRI ...

All parties must consent, on the record, to using VRI.

The court should make clear that if for any reason VRI is not facilitating effective communication, any party – including the interpreter – can request that the matter be suspended and rescheduled with an onsite interpreter.¹⁴

The *Recommended Guidelines* go on to specify minimum technology requirements, including methods for allowing for confidential communications between attorneys and their deaf or hard of hearing clients, and provides checklists and other tools for judges, coordinators, interpreters and equipment operators.

Real-life experience with VRI in the courts – both during the ASL VRI Pilot Project and afterwards – clearly demonstrates, however, that such guidelines are consistently disregarded, and are little more than window dressing if not mandatory and enforced.

The pilot project worked off of similar guidelines to those subsequently adopted by the Judicial Council, with one key difference: Rather than abide a 30-minute maximum time frame, the pilot project instituted a 45-minute time limit. This is significant because it is widely recognized that exceeding a 30-minute time frame jeopardizes interpreter accuracy for in-person interpreting, and interpreting over VRI is even more cognitively taxing.

The Judicial Council’s “ASL VRI Pilot Outcomes” states that “85% of reported events were less than 45 minutes.” This indicates that 15% of the reported events lasted longer than 45 minutes. The number of events that exceeded the more appropriate 30-minute limit cannot be determined due to the way timeframes were reported, but would be even greater. Interpreter surveys indicate 27% of the events for which evaluations are available were at or over the 30-minute limit.¹⁵

The “ASL VRI Pilot Outcomes” also reported that “[d]raft guidelines provided clear assistance *as all scheduled events were considered to be appropriate hearing types.*” (Emphasis added.) Yet this isn’t true. Interpreters reported the guidelines were not being followed consistently, and reported a range of problems in numerous events:

¹⁴ *Ibid.*, p. 2.

¹⁵ A question about event length was included in the interpreters’ evaluation forms. Response options did not include “more than 30 minutes.” Instead, options included “more than 45 minutes” and “26 to 45 minutes.” Of the 22 evaluations from interpreters that reported duration, 27% indicate the event lasted close to or more than 30 minutes (three lasted 26-45 minutes and three lasted more than 45 minutes).

- VRI was scheduled for inappropriate case types and inappropriately long periods – an issue not reflected in the evaluations or acknowledged in the Judicial Council’s “ASL VRI Pilot Outcomes.”
- There was no meaningful oversight to ensure that VRI wasn’t used for long or complex hearings, or hearings involving testimony.
- There was inadequate training of court staff, judges and attorneys to ensure compliance with the guidelines.
- Procedures weren’t followed to ensure access to confidential conferencing between attorneys and ASL-speaking parties.
- Interpreters did not get information about the nature of the event ahead of time, and did not have access to documents for preparation and orientation.

CFI asked the Judicial Council for data on all ASL VRI events that have taken place since the pilot project ended, and we were told that no responsive documents are available. It appears that there has been no training, no tracking, and no oversight of VRI whatsoever since December, 2012.

III. Downplaying Costs and Overstating Benefits

CFI’s review of the Judicial Council’s data on its ASL VRI pilot project shows that the most tracked aspect of the pilot was the purported cost savings associated with providing ASL interpreting services over VRI rather than in person. Here, too, however, the Judicial Council provides no solid basis for its claims and has been sloppy in how it generates the information it regularly disseminates about VRI: Equipment costs are consistently under-reported, and there is no consideration given to the costs of providing the requisite technological infrastructure, extra staff to set up and manage the equipment, or of costs related to training and oversight. Most concerning, VRI’s impacts on critical communications in legal proceedings seem to take a back seat in the drive to save money and have not been the subject of any serious consideration.

On its Web site, the Judicial Council claims that, for VRI, “[a]ll that is required is a laptop, desktop, and/or webcam,” and asserts that the equipment “can be purchased for under \$1000.”¹⁶ The equipment described, however, does not meet the minimum technology requirements adopted by the Judicial Council for ASL VRI.

¹⁶ Video Remote Interpreting (VRI) Project for American Sign Language Interpreting: Stanislaus Court. <http://www.courts.ca.gov/27697.htm>. This information was also posted as a Power Point presentation by Anne Marx, the Judicial Council administrator overseeing VRI, with detailed projections of cost savings associated with VRI. http://www.courts.ca.gov/documents/Stanislaus-VideoRemoteInterpreting-Presentation_ikc.pdf.

The actual cost of the ASL VRI equipment that complies with the minimum requirements is more than ten times higher: approximately \$10,000 per end point, not including cameras, microphones or carts.

CFI obtained information from the Orange County Superior Court about the equipment it received from the Judicial Council for ASL VRI, as well as equipment the court purchased. The total cost of the ASL VRI set up for Orange County was reported to be \$20,818.83, and included:

- Two (2) Cisco EX90 Telepresence units: \$19,245.20 (2 X \$9,622.60)
- Five (5) Cameras: approximately \$450
- Five (5) presentation carts: \$1,123.63 total

The Judicial Council claims that the ASL VRI pilot project showed that VRI has the potential to generate the greatest cost savings by facilitating the sharing of interpreters in different parts of the state.¹⁷ Yet ASL VRI interpreters rarely provided services to different counties on the same given day during the pilot. The “VRI Pilot Cost Worksheet” shows only two dates out of 45 when a VRI interpreter was scheduled to provide interpretation in two different counties in the same day, and only one occasion when a VRI interpreter was used for two locations in the same half-day.

In its Pilot Outcomes, the Judicial Council reported that most cost savings “stemm[ed] from reduction in travel.” We would note, however, that the “VRI Pilot Cost Worksheet” in which the savings were tracked includes projected cost savings for six events in Shasta and Riverside for which the worksheets indicate no VRI interpreter was scheduled or used. Though these events are not counted among the pilot’s VRI events, they are included for the purposes of reported “total cost savings.” It appears this may have artificially increased the projected cost savings and the perception of the program’s success.

While VRI clearly has the potential to generate cost savings related to interpreter travel time and expenses, no cost-benefit analysis has been done to determine how those savings compare against VRI program costs such as equipment purchase, maintenance and upgrades, technical infrastructure and support, training for interpreters, bench officers and staff, coordination, equipment handling and the like. Failure to build these costs into any VRI program will likely lead to the program’s failure, or to problems associated with guideline compliance.

The Judicial Council’s cost savings projections are also based on reduced wage costs for VRI ASL interpreters compared to the cost of in-person contractors. This analysis, however, fails to take into account market factors of supply and demand for this specialization, and adverse consequences for interpreter recruitment and retention. Most certified ASL interpreters charge

¹⁷ A Judicial Council presentation titled “Use of Video Remote Interpreting” and prepared by Anne Marx, its chief administrator of the ASL VRI pilot and program, states that the pilot demonstrated “most money saved with shared resources” (*sic*). http://www.courts.ca.gov/documents/Stanislaus-VideoRemoteInterpreting-Presentation_ikc.pdf, p. 4.

substantially higher rates for in-person court appearances than the standard per diem set by the Judicial Council for court interpreters, which has not increased in nearly a decade.¹⁸ By lowering wages and reducing the work opportunities for in-person interpreters, the courts become a less attractive place for legally certified interpreters to work. Interpreters with legal certification in ASL (and many other languages) are in high demand and are already abandoning the courts for higher paid private sector opportunities. Depressing wages will likely have adverse consequences on the overall availability of interpreters in the long term -- the opposite effect of the Judicial Council's claim that VRI leads to "increased access to certified interpreters."

Since the pilot ended, numerous courts have opted to hire full time interpreters for ASL, and stopped using VRI. This trend would seem to indicate that courts recognize the value of providing in-person interpreters and securing these services by offering regular work opportunities.

IV. Marginalizing Stakeholders and Limiting Access

The Judicial Council's "ASL VRI Pilot Outcomes" report states that its findings were based on the evaluations conducted during the pilot, and that "[a]ll stakeholders were included in the evaluation process." This "outcome" has since been reflected in numerous Judicial Council reports in support of extending VRI to spoken languages, including in the Court's Language Access Plan, which alleges that the ASL VRI pilot project "resulted in very high participant satisfaction."¹⁹ However, although the courts made forms available for stakeholders to evaluate each VRI event they participated in, the courts simply didn't elicit enough feedback from most stakeholders to provide significant results -- and ignored some of the feedback it did receive in order to put a more positive spin on the ASL VRI pilot project results.

CFI repeatedly requested all documentation from the Judicial Council related to evaluations conducted during and after the ASL VRI pilot project. The Judicial Council's Office of Public Access to Judicial Administrative Records (PAJAR) provided CFI copies of the blank evaluation forms for the different stakeholder groups, plus PDF's of spreadsheets of the answers received, and confirmed they had turned over of all documents responsive to our request.

¹⁸ The current per diem is \$156 per half-day and \$288 per full day, and has remained stagnant since 2007.

¹⁹ *Strategic Plan for Language Access in the California Courts*, Judicial Council of California, 2015, p. 37. Also see the Joint Working Group for California's Language Access Plan's Oct. 21-22, 2014, "VRI related proposed changes to the July Publicly Posted Plan" (*sic*), p. 1.

For a total of 45 scheduled VRI events, including six that did not proceed, evaluation spreadsheets showed:

- 48 evaluations from coordinators²⁰
- 26 evaluations from interpreters
- 11 evaluations from equipment handlers
- 9 evaluations from deaf or hard of hearing court users
- 6 evaluations from judges
- 6 evaluations from attorneys, and
- 3 evaluations from technical support staff

These results demonstrate that there were too few responses from participants to be statistically relevant. Nonetheless, the Judicial Council's outcomes reported that "[t]he majority of those involved strongly agreed that VRI ensures timely access to justice."

Important omissions in the response materials provided to CFI impeded our ability to fully evaluate the few evaluations that were completed. For example, for the evaluation responses from coordinators, thirteen answer columns were missing altogether, including those which corresponded to questions about case types, reasons why VRI was deemed inappropriate for the given event, and whether the coordinator had contacted attorneys and parties ahead of time about using VRI for the event.²¹

In the interpreters' responses spreadsheet, columns were cut off related to the proceeding type, non-technological problems encountered (e.g. inaudibility of parties) and the interpreters' comments about the event, making them illegible. The comments columns were likewise cut off on the PDFs of judges' and attorneys' responses.

The columns in the spreadsheet received for deaf and hard of hearing court users' responses did not correspond to the questions in the blank evaluation form provided.

CFI asked PAJAR to provide versions of the response spreadsheets in which all responses were legible, as well as copies of the evaluation forms that corresponded to the answers received. PAJAR only provided a rote reply, stating that "[t]he responses provided included the complete survey responses." Nonetheless, we did note the following:

- Judges failed to complete an evaluation form for 33 of the 39 ASL VRI events. The judge(s) who completed the mere six evaluations received reported they were "very satisfied" although not one of them had ensured that confidential communications were made available for attorneys and their clients.²²

²⁰ It is unclear why there were more coordinator evaluations than scheduled VRI events.

²¹ Missing response columns for the coordinator evaluations corresponded to questions 1-3 and 7-16.

²² Bench officers have ultimate authority over their courtrooms and, as such, the ultimate responsibility for ensuring that guidelines are complied with. Yet, in three of the six cases, the bench officer failed to ensure access to confidential communications between attorneys and their deaf or hard of hearing clients. In the other three, the bench officer(s) reported they didn't know whether such provisions had been made – meaning, effectively, that they neglected their duty to ensure they were.

- Only one of the six evaluations received from attorneys showed that the attorney agreed that “VRI ensures timely access to justice.” Half of the six evaluations received from attorneys indicated the event was not conducive to VRI. Every single one said the attorney either disagreed or strongly disagreed with the statement that VRI better ensured access to a certified interpreter.
- In only five of the 26 evaluations completed by interpreters did they report that the VRI set-up provided the ASL speaker the opportunity to communicate confidentially with his or her attorney;²³ and only twice did they report that the interpreter had been provided with relevant case documents ahead of time.²⁴

While the limited number of VRI events and poor evaluation process during the pilot provide insufficient support for the asserted positive outcomes, and often contradict the positive outcomes widely published in association with the ASL VRI program, things have only gotten worse since the pilot project ended: It appears that there is no evaluation process currently in place to monitor the quality and efficacy of the ASL VRI program.

V. Promoting Misuse and Suppressing Criticism

Perhaps the most misleading of all conclusions put forth by the Judicial Council about its ASL VRI pilot project was that “[t]here was no consensus among pilot participants regarding major challenges to VRI. *Overall, this indicates no compelling challenge or concern needing attention.*” (Emphasis added.)

Clearly, this statement is not supported by the findings reported above. CFI’s communications with ASL interpreters demonstrate that the problems encountered were much more serious than what the limited pilot project evaluations alluded to.

In 2014, CFI began talking to ASL interpreters who had participated in the pilot, or who joined the VRI program after the pilot, as well as interpreters who had stopped providing VRI services. Interpreters reported that the guidelines for appropriate use were not being followed, and cited inadequate training for all concerned as a problem. This led to situations that put interpreters at risk of compromising their ability to interpret ethically and ensure complete and accurate communication. They reported that the courts were trying to use VRI inappropriately. Some expressed feeling powerless to deal with such situations.

Emails obtained through PAJAR reveal that Senior Court Analyst Anne Marx, the lead Judicial Council administrator in charge of the ASL VRI pilot and subsequent program, has pushed to increase VRI use and promoted use outside the parameters set by the Judicial Council’s own guidelines.

²³ Interpreters reported nine times that the set-up had not provided for confidential communications; for the rest, the answer was “don’t know” or left blank.

²⁴ Interpreters answered that they had not been provided documents in advance on 20 occasions.

According to emails between Ms. Marx, court personnel, and ASL VRI interpreters in July of 2013 – halfway through the pilot – Ms. Marx expressed concerns about the limited use of VRI (“I was looking at the calendar and not seeing a ton of usage”). Marx suggested that a court “may be interpreting recommended guidelines very strictly thus limiting VRI.” She urged ASL interpreters to promote broader use of VRI and asked them to let certain courts know “if you come across work here that could have been done on VRI.” Such outreach, she continued, could “make this feel even easier [and] maybe would help open doors to discussing opportunities.”²⁵

Marx was essentially pushing for more VRI use in circumstances where in-person interpreters were regularly available, at locations where the VRI interpreters themselves and other certified ASL court interpreters were providing in-person interpretation.

Emails also show a part of a jury trial (summations) was done using a VRI interpreter in Riverside in October of 2014. In this case, an in-person interpreter was also present in the courtroom to assist the VRI interpreter. Nonetheless, Ms. Marx’s comments in emails about this event demonstrate her interest in establishing that VRI may be used more broadly – without the help of an interpreter in the courtroom to help manage the communications: “It seemed like VRI really saved the day, and that things were handled REALLY well – and so I particularly want to take the opportunity to ‘write it up’ as a case study,” wrote Marx.

Although use of VRI in this case was clearly contrary to the guidelines, she asked the coordinator to explain ways that the guidelines “were followed, and led to the need for a VRI interpreter in a jury trial,” about how the phase of the trial affected the coordinator’s “willingness to proceed with VRI,” and whether she would “still have been able to use VRI if the very last witness was going, and there was another 30 minutes of testimony before closing arguments, for example...”²⁶ Marx ignored the fact that using VRI for the event was in direct conflict with the Judicial Council guidelines and outside the parameters adopted to protect ethical interpreting standards and access and fairness.

CFI worked with two ASL interpreters on a letter about their experience working over VRI, its shortcomings, and problems with how the program was being run. This letter was directed to the Judicial Council’s Language Access Plan (LAP) Working Group, which was developing the statewide LAP at the time. The interpreters verified that the letter accurately reflected their experiences and concerns before CFI submitted it to the LAP Working Group as part of the public comment process.

The Dec. 4, 2014 letter included the following list of issues:

Working remotely using video conferencing in the California Superior Courts, we have experienced the following types of problems that interfere with our ability to

²⁵ July 26, 2013, email from Anne Marx to ASL VRI interpreters, obtained via PAJAR.

²⁶ Oct. 22, 2014, email from Anne Marx to Riverside County interpreter coordinator Vanessa Lopez, obtained via PAJAR.

ensure quality interpreting that meets the standards set in our code of ethics and by the Registry of Interpreters for the Deaf:

- 1. Inadequate visual access to the courtroom for the remote interpreter. The VRI equipment currently being used is designed to ensure good visual contact between the interpreter and the deaf court user. While this is critically important, the interpreter does not have adequate visual contact with the broader courtroom or other speakers. This makes it difficult for the interpreter to be well oriented and to identify speakers, causing misunderstandings and inaccuracies.*
- 2. Lack of information about the courtroom event in advance of the proceeding. Court interpreters need basic information about an event in order to be fully oriented and to ensure accuracy. There are no protocols in place to ensure that the interpreter has basic information about the proceeding type, the parties and speakers who are in the courtroom, the names of participants, and other essential information that is available to in-person interpreters and allows for a smoother and more accurate interpretation.*
- 3. Inadequate opportunity to engage with the deaf participant in order to ensure rapport and adequate understanding based on variations in the communication needs of ASL signers.*
- 4. Inadequate protocols for the interpreter to access information or to notify a bench officer of problems that arise during a proceeding. When interpreting from a remote location, it is very difficult for an interpreter to get the attention of people in the courtroom in order to address issues that arise, ask for repetitions, interject requests that will assist the interpreter in meeting her obligations, or notify the court when a proceeding should not go forward due to impediments to accurate and effective communication.*
- 5. Lack of technical support. Poor connections and lack of protocols for addressing technical issues.*
- 6. Inadequate training of court staff and bench officers on appropriate VRI use, including working effectively with interpreters and deaf participants.*
- 7. Requests that interpreters provide remote services in proceedings that are inappropriate for VRI per the Judicial Council's guidelines for ASL interpreting using VRI, for example for hearings that are too long, complex or with witness testimony. In our experience this is a frequent problem.*
- 8. Lack of support for interpreters or follow-through by the Judicial Council court interpreter program and local court interpreter coordinators to address issues encountered with VRI assignments.*

The Judicial Council's reaction was swift and unexpected. Marx immediately sent an email to Douglas Denton, Judicial Council staff person for the LAP, asking him not to distribute the letter to the LAP Working Group. Denton then contacted the two interpreters asking them to confirm whether or not they wanted the letter to be distributed as public comment. In the meantime, according to both interpreters, Marx contacted them and was clearly unhappy about their decision to report these experiences. Marx called their professional conduct into question, and one of the interpreters reported that Marx was angry and rebuked her for writing

the letter. Both interpreters reported that they felt very uncomfortable with the “overreaction” and opted to withdraw the letter. Both interpreters later confirmed to CFI that the letter’s account of problems they experienced with the courts’ ASL VRI program was accurate.

CFI’s serious concerns about motivations for pushing to expand VRI use are reinforced by the way criticism of the ASL VRI program was received and suppressed. Ms. Marx has demonstrated that her focus is on making the program look good by underplaying the challenges and overplaying positive outcomes. Marx appears to be invested in having the technology succeed, and has whitewashed VRI’s limitations. This is a particularly reckless approach to adopt when dealing with fundamental rights and linguistic minorities’ ability to meaningfully participate in court proceedings.

Emails obtained from PAJAR show that in March of 2015 – just three months after the Judicial Council received the ASL interpreters’ letter – Ms. Marx was actively soliciting interpreters to work over VRI in a preliminary examination in Placer County.²⁷

VI. Across the State, VRI Equipment Gathers Dust

The Judicial Council’s Language Access Plan (LAP) Implementation Task Force is pursuing the expansion of VRI to spoken languages in California’s trial courts. The LAP points to the ASL VRI pilot’s reported success as a basis for expansion to spoken languages, and claims that “[s]ubsequent to the completion of the pilot, use of VRI in ASL events has expanded to more than a dozen courts around the state.” The statement, which has been echoed in numerous Judicial Council reports,²⁸ gives the false impression that use of VRI for ASL is increasing. However, all the information that CFI received and verified indicates that VRI use was very limited during the pilot and has declined substantially since then.

As stated earlier in this report, no documentation is available on the Court’s use of ASL VRI for the three years after the pilot ended in 2012. CFI asked the Judicial Council how VRI use for ASL is tracked, but has not received a substantive response to the question.

²⁷ Preliminary examinations are inappropriate for VRI on multiple grounds under the Judicial Council’s own guidelines because they are too long, complex and involve testimony. According to emails obtained by CFI, the matter was not scheduled for VRI because interpreters objected and pointed out the hearing would require in-person interpretation.

²⁸ *Strategic Plan for Language Access in the California Courts*, Judicial Council of California, 2015, p. 37. The same misrepresentation has been repeated for years and appears in numerous Judicial Council reports such as the LAP Implementation Task Force Report to the Judicial Council for the February 26, 2016 Judicial Council meeting, the Joint Working Group for California’s Language Access Plan’s Oct. 21-22, 2014, “VRI related proposed changes to the July Publicly Posted Plan” (*sic*), and others.

Interpreters interviewed about their experience with VRI consistently reported a decline in the use of VRI both during and after the pilot.²⁹ According to one interpreter, “The demand was less and less. Deaf people wanted a live interpreter.”

Several interpreters have commented that people (including deaf parties and attorneys) want the interpreter to be able to move with them, and position her/himself in a way that maximizes the deaf party’s participation, which is not possible with VRI. Interpreters and other court staff have also noted that the mobility of the VRI cart is “cumbersome,” and the inability to move around with the interpreter to have private conversations is much less conducive to communication than having an in-person interpreter. Interpreters and court staff also told CFI that courts often lack adequate staffing to have someone available to move the VRI cart from location to location, and take care of the setup, testing requirements and technical support. This has been a deterrent to using VRI and a deterrent to complying with the guidelines.

The best information available to CFI does not support the claim that VRI use for ASL is expanding, but rather the contrary. A Judicial Council “VRI Phase 2 Contact List” (dated 10/22/13) lists a total of 13 courts that are using VRI. These include the original six pilot courts -- Riverside, Ventura, Stanislaus, San Joaquin, Sonoma and Shasta -- as well as Orange, Fresno, Merced, Alameda, Contra Costa, Solano and Placer. Interpreters and coordinators we spoke with confirmed that five of the six pilot courts (all but Shasta) are currently not using VRI at all, or rarely. Four of the courts purportedly added since the pilot project are also not using VRI for court proceedings (all but Fresno and Merced).

Riverside was the largest user of VRI for ASL matters during the pilot. The Riverside court hired two full time staff interpreters for ASL in 2013, however, and now uses VRI very little, if at all.

In San Joaquin, an ASL interpreter used the equipment at the courthouse during the pilot to provide services remotely to other courts (primarily Riverside), but San Joaquin did not use the equipment to have remote interpreters appear for ASL needs in its own court. San Joaquin reportedly returned the VRI equipment to the Judicial Council at some point after the pilot ended.

The Orange County Superior Court (OCSC) has VRI equipment that is reportedly used to connect an interpreter at the court to outside agencies or the self-help center for matters other than court appearances, such as probation interviews. CFI obtained information from OCSC court administration that it participated in a “second phase pilot” from November 2012 through November 2013. OCSC reported using VRI for a total of five events from September 2013 through September 2014 -- twice at the self help center and three times for court appearances. The court reported in October of 2015 that it had not used VRI for any court proceeding since September, 2014.

²⁹ CFI is keeping the identity of sources confidential because some interpreters who reported problems with VRI received harsh rebukes from Judicial Council staff and some were fearful of retaliation and potential loss of work.

The Alameda County Court is not using VRI and has no equipment despite its inclusion in the list of participating courts. Equipment was provided by the Judicial Council to several other courts but is not being used.

CFI has no information about whether or not VRI is being used for ASL in Shasta, Fresno, or Merced.

CFI is continuing to seek information from the Judicial Council that would substantiate the claim that ASL VRI use has expanded since the pilot. Based on the information provided to date, however, it is clear that the Judicial Council's reliance on the VRI program for ASL as a basis for expansion of VRI to spoken languages is utterly without foundation.

VII. The VRI "Solution": A Disservice to Linguistic Minorities

A rigorous analysis of the Judicial Council's track record with VRI does not inspire confidence in its current promises that VRI will be implemented responsibly for spoken languages in California's courts. The Judicial Council's penchant for basing language access policy decisions on manufactured successes -- and, indeed, promoting noncompliance with its own guidelines -- without concern for the consequences, is profoundly irresponsible and does a great disservice to all linguistic minorities in California who require language access services in our courts.

A crucial concern is that while courts may save some money using VRI, it is likely that deaf and hard of hearing court users' experience and participation in their hearings was inferior to having an in-person interpreter.

According to Jemina Napier, one of the world's foremost experts on the use of VRI for ASL in judicial settings, VRI "may not be the panacea for cost-effective interpreting services, especially in high consequence settings such as court, as there may be more risk in using the system than the inconvenience of waiting for an interpreter to be available face-to-face."³⁰

CFI, the exclusive representative of approximately one thousand staff interpreters across the state, does not have a seat on the Judicial Council's LAP Implementation Task Force, and efforts on the part of CFI to sound the alarm on the implications of VRI's misuse have fallen on deaf ears.

CFI has called repeatedly on the Judicial Council and its LAP Implementation Task Force to conduct a serious cost-benefit analysis that includes an honest inquiry into how VRI impacts access, participation and fairness for LEP court users -- researched by experts in the fields of interpreting, linguistics and law. We have urged them to adopt mandatory standards and protocols for VRI and a scrupulous evaluation process to ensure that they are respected, but to

³⁰ "Exploring Themes in Stakeholder Perspectives of Video Remote Interpreting in Court," in *Interpreting Across Genres: Multiple Research Perspectives*, C. J. Kellett (Ed.), Edizioni Universtà di Trieste, 2012, p. 249.

no avail: CFI submitted comments to this effect to the Judicial Council's Joint Working Group for California's Language Access Plan well before the Council adopted the LAP on January 22, 2015.³¹ CFI also included a prior draft of this report in public comments submitted to the Judicial Council on March 21st of this year. CFI urged, "As the Judicial Council prepares to approve a pilot project for spoken language VRI, we want to ensure that the methodology is much more rigorous than it was for the ASL VRI pilot."

The Judicial Council continues to ignore calls for obligatory guidelines and specified in developing plans for the expansion of VRI to spoken languages that the plan "would not preclude trial courts from identifying and implementing alternative solutions which are consistent with the technical requirements as approved by the Judicial Council."³² In the meantime, the Fresno Superior Court has already implemented its own VRI program for spoken languages using a grossly inadequate technical set-up that is hardly being used but continues to be touted as another "successful" model of VRI's viability.

On May 20th of this year, the LAP Implementation Task Force voted to recommend that the Judicial Council approve a VRI pilot project for spoken languages without even seeing the proposal it was recommending. On June 22nd, CFI appealed to the Judicial Council once again to refrain from approving a VRI pilot project for spoken languages "without a clear plan that includes a rigorous evaluation process, thorough consideration of VRI's limitations, and analysis of controls needed to ensure due process and effective communication and access."³³

Two days later, the Judicial Council approved plans to launch a VRI pilot project for spoken languages that fails to include interpreter representatives in the developmental stages and includes no mention of how the pilot is to be implemented or evaluated.

³¹ See CFI's April 15, 2014, and Sept. 29, 2014, public comments to the Joint Working Group for California's Language Access Plan.

³² Report to the Judicial Council, *Language Access: Translation and Educational Products, Development Plan for Remaining Materials, and Video Remote Interpreting Pilot Project*, June 13, 2016.

³³ See *Attachment 1*: CFI's June 22, 2016, public comments to the Judicial Council include recommendations for the appropriate use of VRI and conditions necessary to ensure the pilot provides a valid evaluation of VRI's costs and benefits.

June 22, 2016

Chief Justice Tani Cantil-Sakauye
Judicial Council of California
Via email to: judicialcouncil@jud.ca.gov

RE: Agenda Item 16-042 – Language Access: Translation and Educational Products,
Development Plan for Remaining Materials, and Video Remote Interpreting Pilot Project

Dear Justice Cantil-Sakauye and Council Members:

The California Federation of Interpreters represents more than 1000 court interpreters working in the courts throughout California as staff and independent freelance interpreters.

CFI supports the outstanding work of the task force on translation protocols and education materials for the implementation of California's Strategic Plan for Language Access (LAP). Education of judicial officers and court staff on language access standards and cultural competence is critically needed to improve access and fairness for limited English proficient (LEP) court users. These elements of the LAP should be a high priority and this training should be mandatory and ongoing.

As part of this agenda item, you are also asked to approve moving forward with the VRI pilot project for spoken language interpreting, described as "one of the most critical recommendations of the *Strategic Plan*." While CFI has supported the concept of a pilot as necessary to evaluate VRI, we do not support the VRI pilot as currently proposed. The parameters and design are not sufficiently defined and the proposal fails to address critical factors that should be taken into account for the pilot process to be useful and effective.

We respectfully suggest the Judicial Council should not approve the VRI pilot project without more information and a better, more defined plan. Doing so would risk another failed technology project and use precious resources that can be better applied to the broader efforts to expand language access. Our objection is based on the following concerns:

- The courts are in the process of expanding services to all civil proceedings using in person interpreters, and this effort should be the priority. An analysis of the feasibility and costs of full expansion using in person interpreters, and more data on any gaps in availability of in person interpreters should inform decisions on VRI use. Prioritizing VRI and pursuing it at this stage is the wrong approach and is premature.

- The pilot prioritizes identifying equipment and vendors before necessary pilot design is completed. Determining minimum technology guidelines and selecting equipment should be based on what uses are identified as appropriate for the VRI pilot. Interpreters know better than anyone who they need to hear, what they need to see and the sound and visual quality required for us to be able to do our jobs, yet they are not being included in a meaningful way in the developmental stages. Furthermore, more sophisticated equipment is required for complex and involved communications, and factors such as the number of speakers will impact equipment needs. Issues such as the physical distribution of parties must also be considered. Pilot parameters should be defined in much more detail, with more significant interpreter input, before the pilot is approved and an RFP is issued.
- The pilot focuses on use of VRI for court proceedings rather than expansion of language access outside of court proceedings. Testing and evaluation of VRI to provide access outside of court proceedings presents less risk to due process, is more appropriate, would do more to provide badly needed comprehensive language access services, and would be much easier to implement. Failure to include this as an element of the pilot calls into question whether the purpose of pursuing VRI is to expand access.
- The task force process to date has excluded meaningful participation from interpreters as stakeholders in the development of the VRI pilot. Interpreters *and their exclusive representative* must be included in order to successfully establish guidelines and requirements for appropriate VRI use.
- The Pilot fails to address how it will ensure compliance with the Trial Court Interpreter Employment and Labor Relations Act, and fails to include provisions that ensure use of staff interpreters, and use of certified and registered interpreters in matters where employees are not available.
- VRI is being promoted as a “solution” based on uncorroborated and unfounded claims of its success in Fresno, in other states, and for American Sign Language (ASL) in California. Our research into the ASL pilot and current use for spoken languages demonstrates that VRI proponents in the branch are barreling forward with plans to institute VRI without adequate controls and evaluation, and without consideration of its harmful impacts on judicial inquiry and on Limited English Proficient (LEP) court users’ due process rights.
- The VRI Pilot Project RFP specifies that the vendor must provide the VRI equipment for free for the duration of the pilot project and that the courts are under no obligation to purchase that equipment when the pilot ends. The courts could point to the pilot as a success, then return the equipment that made it work as well as it did and proceed to implement VRI using different, inadequate technology. This happened in Florida, where they developed the first VRI system that allows for simultaneous interpretation of court proceedings, and which has been promoted as a successful model to be reproduced.

Another concern is that we have yet to see any serious consideration of how VRI use impacts due process and meaningful access for LEP court users. A VRI Pilot that aims to study these issues needs to be better defined and should include a rigorous evaluation process that takes into account the following factors:

- The pilot does not include a component for full expansion using in person interpreters in certain courts as a point of comparison. Such a comparison is necessary in order to conduct a valid cost-benefit analysis.
- Real-world experience shows that when interpreters are provided by video instead of in person, attorneys frequently do not get the opportunity to communicate confidentially with their clients, and LEP parties are not granted language access services for critical ancillary needs such as reading important court orders and post-hearing instructions or participating in mediations.
- Even when “done right,” VRI limits interpreters’ ability to provide full and accurate interpretations, and is much more likely to result in significant errors that affect meaning.
- In immigration court, where video-mediated hearings are most common, detained persons facing deportation appearing in person are *90% more likely to apply for relief* and one-third more likely to obtain a lawyer than when their cases are heard by video.

The VRI pilot should not be approved without a clear plan that includes a rigorous evaluation process, thorough consideration of VRI’s limitations, and analysis of controls needed to ensure due process and effective communication and access. These elements are critical to successful implementation of VRI and responsible expansion of language access.

CFI submitted written comments to the task force on our research into efforts to implement VRI for ASL, including detailed findings on the inadequacies of the ASL Pilot evaluation, and evidence that claims of VRI’s success for ASL and in Fresno for spoken languages are unfounded and misrepresented.¹

Court administrators have a poor track record when it comes to ensuring that courts conduct diligent searches for in-person interpreters, or ensuring that VRI isn’t applied too broadly or that courts otherwise comply with basic guidelines related to interpreting generally, and delineating VRI use specifically. Our yearlong investigation into California’s ASL VRI program – the California courts’ first venture into VRI – found that administrators and Judicial Council staff used partial data to characterize the ASL VRI Pilot Project as a “success,” suppressing evidence to the contrary, and pressured interpreters to use VRI for inappropriate hearing types – in direct violation of the Judicial Council’s own recommended guidelines.

It is troubling to see that despite this evidence, the task force and branch leaders continue to promote these programs and to reiterate claims of their success to justify the current pursuit of

¹ CFI Comments submitted to the LAP task force (March 22, 2016 Public Meeting):
<https://cfi.memberclicks.net/assets/docs/CFI%20Public%20Comments%20for%20JC%2003222016.pdf>

VRI for spoken languages. It would be ill advised to approve an undefined Pilot Project for spoken language VRI based on this track record.

We urge the council not to move forward based on the vague plan before you today and unfounded claims about VRI's potential. We furthermore urge the Council to:

- Prioritize pursuing a pilot project for providing in person interpreters for all civil matters;
- Require that the VRI pilot program be pursued initially for providing interpreter services to ancillary services that involve simple, two-way communications, such as self-help centers, financial hearing interviews, probation interviews, and consultations between public defenders and their clients and between DA's and victims and witnesses;
- Incorporate interpreter representatives in the developmental stages of any VRI pilot;
- Require rigorous evaluation that includes all stakeholders, as well as independent oversight of any VRI pilot program to assess its impacts on the interpreting process itself and on due process, and on how relational dynamics are impacted in video-mediated versus in person communications, incorporating experts in the fields of interpretation, linguistics and law.

CFI stands ready to participate in a responsible plan that includes our expertise and respects our knowledge of how to implement VRI in a manner that protects access and fairness, and allows us to uphold our professional standards.

Sincerely,

A handwritten signature in black ink, appearing to read "Ariel Torrone", written over a large, stylized, hand-drawn arrow pointing to the left.

Ariel Torrone
President

cc: Hon. Mariano-Florentino Cuéllar, Chair
Hon. Manuel J. Covarrubias, Vice Chair
Language Access Plan Implementation Task Force
Ignacio Hernández, Hernández Strategy Group, LLC