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## Video Remote Interpreting Position Statement

This paper summarizes the position of California Federation of Interpreters on the use of Video Remote Interpreting in the legal environment. A more detailed explanation of the basis for these positions is currently being prepared.

### Background

The United States Department of Justice has notified all state courts that they must provide meaningful access to for all court users regardless of their language abilities and regardless of case type – or risk losing federal funding and face possible litigation in federal court.<sup>1</sup> California courts have not complied with this mandate despite available resources and a pool of qualified, competent interpreter employees.<sup>2</sup>

The California state courts serve the largest population of limited English proficient (LEP) individuals nationwide. In response to this challenge, over the past thirty years, the courts have developed a strong foundation in law and practice to provide certified and otherwise qualified interpreters in criminal, juvenile and some civil proceedings. In response to a DOJ investigation, the California courts must now expand language access to cover all case types. In this context, the Administrative Office of the Courts and the DOJ consider the use of Video Remote Interpreting, or VRI, as a potential tool to expand language access while controlling costs.

VRI can refer to a wide variety of uses of video and audio telecommunication technology in interpreter-mediated communications. For an in-depth explanation of existing research and implementations of VRI, we suggest the work of Braun and Taylor (2011), “Video-mediated interpreting: an overview of current practice and research.”<sup>3</sup>

### CFI’s Position on the Use of VRI in the California Court System

The California Federation of Interpreters has many concerns about proposals to implement VRI in California's courts. What guides our position and our primary concern is our experience and understanding of what it takes to provide meaningful language access – which is the guiding principle of our profession and the standard courts must achieve based on California law, Civil Rights law, implementing regulations, and DOJ guidelines.

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1 Perez, T. E., Letter to State Court Chief Justices and Court Administrators, US Department of Justice, August 16, 2010, [http://www.lep.gov/final\\_courts\\_ltr\\_081610.pdf](http://www.lep.gov/final_courts_ltr_081610.pdf)

2 Jang, D., Letter to Chief Justice Cantil-Sakauye, et al. US Department of Justice, May 22, 2013, [http://www.lafla.org/pdf/DOJ\\_Findings052213.pdf](http://www.lafla.org/pdf/DOJ_Findings052213.pdf)

3 [http://www.videoconference-interpreting.net/BraunTaylor2011/03\\_Braun\\_Taylor\\_current\\_pr\\_res.pdf](http://www.videoconference-interpreting.net/BraunTaylor2011/03_Braun_Taylor_current_pr_res.pdf)

CFI agrees that VRI, if used appropriately, has the potential to play a specific, albeit limited, role in expanding language access in the courts. We are prepared to work with the AOC and the many judicial branch entities to develop appropriate guidelines and limitations for the appropriate use of VRI. CFI can and should be considered a resource and a partner for implementing and guiding the expansion of language access using VRI.<sup>4</sup> CFI's primary concern is how to define the appropriate use of VRI and how to create safeguards to enforce and protect the meaningful access standard.<sup>5</sup>

This is something that as of this writing has yet to be determined by the Judicial Council and the AOC and the courts in California.

### Conditions Necessary to Ensure Appropriate Implementation of VRI

The following recommendations and positions are the result of an extensive review of studies and reports on the use of VRI and other video mediated communications – both national and international in scope – in a variety of settings, including courts; as well as the direct experience of CFI members and leaders in observing and using VRI technologies. Studies and reports that inform our position reviewed the benefits and limitations of VRI, as well as the impact on case outcomes and credibility of parties using video mediated communications.

As more research becomes available and as CFI observes and gathers information on VRI we will continue to provide more detailed positions and more specific recommendations. Additionally, we considered and analyzed the real-life conditions in California in developing recommendations for the appropriate implementation of VRI to expand language access in a manner that protects and upholds the standards of meaningful language access and the fundamentally important ability to communicate within the judicial system.

#### 1. Review and Study of VRI

Any implementation of VRI as a tool to expand language access in the courts should be preceded by a serious review and understanding of VRI's inherent limitations and its potential impacts on meaningful language access.

The touchstone as to VRI's appropriate use must be based on effectively meeting the language access needs of the LEP court user in a meaningful way that maintains the necessary scope of access and communication at a level of precision and accuracy that preserves due process.

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4 "We strongly suggest that the AOC and LASC seek interpreter input in any efforts to develop a video remote interpreter program." Jang, D., May 22, 2013

5 "Involve expertise at the planning stage. Involve interpreting/linguistic, legal and technological expertise to work out the specifics of your setting and to approve your solution." Braun, S. (2011). Recommendations for the use of video-mediated interpreting in criminal proceedings. In Braun, S. & J. L. Taylor (Eds.), Videoconference and remote interpreting in criminal proceedings. Guildford: University of Surrey, 281.

## 2. Development of Appropriate Use Guidelines

Following analysis and discussion of the literature on video-mediated communication, well-defined, enforceable rules and guidelines for appropriate use of VRI must be adopted before attempting to implement it in any court setting.

Rules should provide checks against inappropriate use, a process for reporting problems with VRI, and a guaranteed procedure in which interpreters or parties to the communication can halt or end an interpreting event when the circumstances result in inaccurate or incomplete interpretation, or undue impediments to communication.

Rules and policies should also be clearly communicated to all users, including but not limited to the interpreter, parties to a matter, attorneys, court staff, and judicial officers. Any of the individuals involved should be able to raise concerns related to the use of VRI and have them addressed before proceeding with the interpreted event.

CFI has experience with the overall institutional function, and dysfunction, insofar as providing language access, and this history contributes significantly to our positions and recommendations. The courts' track record with respect to following California statutes and rules of court demonstrates the need to adopt and disseminate clear and enforceable rules around the appropriate use of VRI in the courts.<sup>6</sup>

## 3. Establish a Clear and Open Process that Includes Interpreter Representatives and other Stakeholders

Interpreters are the primary providers of language access in the court system. They are applied linguistics experts, providing highly skilled and complex services to bridge the language gap both in court proceedings and language service events outside of courtrooms. Interpreters overcome language barriers on a daily basis and they are uniquely positioned to understand and identify the inherent challenges in achieving language access in the judicial system. The interpreter, more than any other court staff, understands the obstacles to clear communication when the interpreter is not actually present at the same court site with the parties to a communication.

Any process for establishing guidelines for VRI use must also necessarily include stakeholders in the legal community with expertise in due process and access concerns in civil and criminal proceedings.

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<sup>6</sup> Many courts currently fail to comply with numerous best practices and existing requirements regarding interpreter services, including statutory rules to ensure the use of competent interpreters (G.C. Section 68561 and related Rules of Court) that require courts to perform a diligent search for a certified interpreter before using a non-certified interpreter. Courts vary in their level of awareness and compliance with these and other rules, and lack of compliance with language access rules and standards has been a long-standing problem in the court system statewide.

4. Careful and incremental implementation through pilot projects and initially using VRI outside of court proceedings is essential for determining its appropriate use.<sup>7</sup>

The experience of judicial systems in other states, as well as its application in private industry indicates that VRI is often implemented with unreasonable expectations for its potential to increase language access services and reduce costs while ignoring concerns and the limitations of the technology.<sup>8</sup> Large outlays of capital are undertaken to implement the technology resulting in users becoming invested in the use of VRI regardless of the harm it may cause. This then presents court administrators with the problematic choice of maintaining a commitment to use a system that oftentimes does not provide meaningful access, or abandoning a significant investment that was originally meant to save money.

California should avoid this pitfall by approaching the use of VRI thoughtfully and testing its effectiveness before making significant investments in the technology.

#### Foundational Observations and Factors Relevant to Determining Appropriate Use of VRI in California

The body of research on Video Remote Interpreting, although often recognizing potential benefits of a remote interpretation system, consistently report that an in person, on-site interpreter is preferred.<sup>9</sup> This is due to the inherent and unavoidable limitations on access through VRI and the gravity of matters decided in the judicial process.

VRI is adopted most frequently in state and local courts to address severe shortages of qualified, competent interpreters, and in situations where due to distance or other factors, the choice is to have no qualified interpreter or a qualified interpreter over VRI.

California's situation is distinguished by the unique employment system and the nation's largest workforce of certified and registered interpreters. More than 900 interpreters, working in 52 languages are already employed by the courts and another 900 provide services as contractors. The employment system allows for great flexibility; from full time employment to as-needed per diem and contract workers; and an innovative and efficient statutory cross-assignment system that allows courts to share interpreter resources across jurisdictions.

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7 Braun S. (2011) page 280

8 "[Claims made by US courts] clash with some of the research findings in relation to legal videoconferencing, VCI in legal proceedings and remote conference interpreting. Yet, as in immigration, the appeals by researchers (and some legal professionals) for caution have not stopped the use of VC in legal proceedings (with or without an interpreter) nor the use of VC technology for remote interpreting." Braun, S. & J. L. Taylor (2011). Video-mediated interpreting: an overview of current practice and research. In Braun, S. & J. L. Taylor (Eds.), Videoconference and remote interpreting in criminal proceedings. Guildford: University of Surrey, p 47.

9 "In-person interpretation is the preferred method of delivering interpretation services." Asian & Pacific Islander Institute on Domestic Violence, (2009) Resource Guide for Advocates and Attorneys on Interpretation Services for Domestic Violence Victims, pg 7, online at:

[www.dcf.state.fl.us/programs/domesticviolence/dvresources/docs/InterpretationResourceGuide.pdf](http://www.dcf.state.fl.us/programs/domesticviolence/dvresources/docs/InterpretationResourceGuide.pdf)

VRI presents well-recognized challenges to providing meaningful access that include:

- ⤴ Impediments to complete and accurate interpretation including audibility and loss of visual and other extra-linguistic cues for the interpreter and the LEP party.<sup>10</sup>
- ⤴ Lack of general spatial orientation and context to the proceedings affecting complete and accurate interpretation.
- ⤴ Increased time and delays associated with equipment issues and of conducting communications in the consecutive mode.
- ⤴ Reduced degree of access for court users as compared to the range of service and level of accessibility provided by in-person, on-site interpreters.
- ⤴ Problems with guaranteeing confidentiality and attorney-client privilege, as required by law.
- ⤴ Limitation of time and content. (Studies and the experience of judicial systems around the world indicate that VRI is inappropriate for any lengthy proceeding or for complex proceedings.)<sup>11</sup>
- ⤴ Unsuitability to noisy and often chaotic courtroom environments in as found in state courts.<sup>12</sup>
- ⤴ The requirement of major outlays for equipment and modifications to courtrooms to establish a system capable of overcoming some, but not necessarily all of the limitations described above.

Considering the volume of interpreted proceedings in California, using in-person interpreters is more efficient, practical, and provides the highest degree of access for the vast majority of judicial proceedings in California. This reality must be included in any cost-benefit analysis of VRI's practicality as a solution to expanding access to court proceedings in California.

### Appropriate Uses

Research indicates that remote interpreting is beneficial for short communications with limited speakers under rigorously controlled conditions.

In light of the factors and issues listed above, the most appropriate and immediate benefits for presently using VRI in California is to provide qualified, competent interpreters for interpretation needs outside of

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10 "Interpreting is cognitively demanding, and problems associated with an overload of cognitive processing capacity can be observed in almost any interpreting situation.[...] cognitive overload also leads to problems with accuracy, completeness and appropriateness of the rendition. [...] the studies revealed a tendency for such problems to be more frequent and magnified in video-mediated interpreting." Braun, S. (2011). Recommendations, pg 269

11 "Our data and Moser-Mercer's study show a decline in the interpreting quality (increase in the number of errors) after approximately 15 to 20 minutes, suggesting that interpreters may not be able to work for an extended period of time in a video link." Braun S. (2011) Recommendations page 279

12 Braun, S. (2011) Recommendations pg 274

proceedings and hearings performed within a courtroom. For example, video remote interpreters could be made available for necessary interviews and post-hearing follow-up events, such as:

- Attorney-client or attorney-witness interviews.
- Processing fine payments.
- Reviewing probation conditions.
- Setting up community service, drug programs, traffic school, or DUI classes, as well as general inquiries from the public.

With careful planning and coordination, the courts could expand language access to court operations significantly by using the existing staff interpreters to a greater degree without incurring unreasonable additional costs.

Additionally, many justice partners – district attorneys, public defenders, bar panel, and other support personnel working by court appointment – struggle to perform their functions when serving LEP parties and need access to qualified, competent interpreters to prepare for court hearings. Attorneys, victim services, as well as self-help centers could utilize the services of the courts’ interpreters through VRI to carry out the client interviews and consults so essential to due process and preparation for in-court proceedings and hearings.

Upon further study and the establishment of appropriate rules for VRI use in the courts, specific criteria may be identified for additional uses that are appropriate, including for brief matters in courtrooms where it is unreasonable or impractical to access an in-person interpreter.

## 5. VRI Working Conditions

The impact of VRI use on interpreter working conditions and interpreter performance must be considered and evaluated. Defining appropriate use of VRI must include safeguards to maintain accuracy and ensure that interpreters can perform in accordance with their ethical duty to maintain the legal equivalence standard that is a fundamental requirement in the legal setting.

Working conditions related to VRI use impact interpreter performance and compliance with ethical duties. Being in a remote location has a significant effect on the interpreter's overall ability to ensure a complete and accurate interpretation due to factors such as:

1. Audibility.
2. Visual orientation and extra linguistic communication cues.
3. Access to documents and other information.
4. Access of the LEP court user to the interpreter and of the interpreter to LEP court user.
5. The ability to maintain confidentiality.

Maintaining a level of performance that places the LEP court user on equal footing with an English speaker is the interpreter's ethical responsibility pursuant to the code of ethics adopted under CA Rule of

Court 2.890. Interpreters are required to inform the court of any impediment to the interpreter's ability to maintain accuracy at a level to protect due process. Working conditions that affect interpreter performance include, but are not limited to:

1. The quality and appropriate type of equipment.<sup>13</sup>
2. The degree of training and competence with the technology, both for the interpreter and other users.<sup>14</sup>
3. Audibility and lack of visual and other contextual cues.<sup>15</sup>
4. Access to documents and other information.

Studies show that VRI presents significant challenges to maintaining accuracy and that this creates greater fatigue for interpreters, limiting the length of time that an interpreter can maintain the requisite level of accuracy.<sup>16</sup> These factors must be considered and evaluated in defining the appropriate use and implementation of VRI in the court setting.

## Conclusion

The level of analysis and discussion necessary to establish appropriate and enforceable criteria and guidelines on the use of VRI has not taken place, and a process or forum has not been established for a public, transparent discussion of the issues and concerns related to using VRI instead of in-person interpreters.

There must be a shared acknowledgment between the courts and its interpreter workforce that there is a pressing need for explicit and enforceable limitations on VRI and clear guidelines developed collaboratively among stakeholders and interpreter representatives to protect meaningful access. The California Federation of Interpreters supports using VRI technology appropriately; nevertheless, CFI equally recognizes the inherent threat to meaningful language access and civil liberties raised by its potential for inappropriate use.

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<sup>13</sup> The project has produced some operational guidelines as well as detailed specifications for the videoconference equipment, which are largely in line with the appeal made by researchers and practitioners that the best possible equipment should be used. (Braun S. & J.L. Taylor 2011. Video-mediated interpreting: and overview of current practice and research p.41)

<sup>14</sup> --VCI or RI were feasible forms of interpreting in criminal proceedings. However, they should only be used on condition that sound and image quality were excellent, training was provided to allow interpreters and legal professionals to become familiar with the specific requirements of VCI—(Braun S. & J.L. Taylor 2011. AVIDICUS comparative studies p.114)

<sup>15</sup> The interpreters were concerned that body language and emotions were not transmitted as efficiently in the VC as they were face-to-face and this might undermine the refugee's credibility. The interpreters also felt that the VC communication involved more repetition and overlapping speech, which was difficult to resolve and impeded accurate translation. (Braun, Taylor- *Video mediated interpreting: an overview of current practice and research* p.43)

<sup>16</sup> In the relatively small ITU study, the interpreters' RI performance declined faster than their on-site performance, and this was explained by an earlier onset of fatigue in RI: "Interpreters tire significantly more quickly, as evidenced by a faster decline in quality of performance over a 30-minute turn" Braun, Taylor- *Video mediated interpreting: an overview of current practice and research* p.37; Moser-Mercer 2003:1)