

March 21, 2016

CFI Comments for March 22, 2016 Public Hearings on California's Strategic Plan for Language Access in the California Courts

To: Hon. Mariano-Florentino Cuéllar, Chair
Hon. Manuel J. Covarrubias, Vice Chair
Hon. Members: Implementation Task Force: Strategic Plan for Language Access

Accountability, Due Process, and Video Remote Interpreting

CFI strongly supports the goals of the LAP and most of its recommendations, and commends the task force for this ambitious work.

Our concerns revolve around the need for accountability as courts implement the LAP recommendations, in order to ensure courts achieve the fundamental plan goals: consistent, meaningful language access for court users throughout the court system. California courts have a poor track record when it comes to accountability in language access delivery and in understanding standards and conditions that are *necessary* to ensure meaningful language access.

One of the greatest areas of concern is the planning, evaluation, and implementation of Video Remote Interpreting (VRI). The Judicial Council and the LAP implementation task force have prioritized the pursuit of VRI as an important element to achieve expansion of interpreter services to all court proceedings.

“Given the state’s size and population, expanding access by appropriate uses of video remote technology that allows for remote sessions while protecting due process remains *one of the most critical recommendations* of the Strategic Plan.”¹ (emphasis added)

Innovation and technology are empty buzzwords if not grounded in real, hard analysis of VRI’s useful applications and a realistic understanding of the limitations it presents. CFI has conducted its own research into the use of VRI in California, looking at VRI implementation in California for American Sign Language (ASL), and VRI use in Fresno for spoken languages. CFI is also researching VRI use in Florida for spoken languages, and findings are included here that may provide valuable lessons for California.

Our research shows that claims about VRI’s successful implementation for ASL lack foundation and are based on limited experience, selective reporting of evaluation results, and

¹ Report to the Judicial Council for Business Meeting of 2/26/2016: *California’s Language Access Plan: Model Action Required Notice for Limited English Proficient (LEP) Court Users; Video Remote Interpreting Pilot Project; Progress Report on Implementation of the Strategic Plan for Language Access in the California Courts*

Northern California office

725 Washington Street #310. Oakland CA 94607 | Phone: (510) 663-4661

a lack of rigor in evaluations. Judicial Council staff used poor methodology and presented skewed results about the ASL VRI pilot that are not supported by the actual data collected nor by experiences reported by users. The Fresno court has also exaggerated the success of its VRI system. In both cases, we found a total lack of analysis or attention to due process, or serious evaluation of whether the systems used ensure meaningful language access and adequate participation by LEP users.

What is needed, and has so far not occurred, is a fair and thorough analysis of VRI's potential, limitations, costs and associated risks in terms of due process and meaningful participation for LEP court users. 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. A true cost-benefit analysis would be designed and conducted to determine *whether* VRI use is feasible and *whether* it can appropriately be used to such an extent that it would provide the desired benefits, both in terms of increasing access and protecting due process. Reducing costs should not be the driving focus of analysis regarding VRI as it was for the VRI ASL pilot.

The Judicial Council and LAP task force reports discuss the need for VRI and its potential for expansion as if these are established and known facts. For example, the February 26, 2016 report to the Judicial Council from the LAP task force includes a series of assumptions in its discussion of the pilot project for VRI in spoken languages:

Among the benefits of remote interpreting is the prompt availability of language access for litigants by providing certified and registered interpreter services with less waiting time, and fewer postponements; this saves both the court user's and the court's valuable time. In addition, having qualified interpreters more readily available through remote interpreting can decrease the use of less qualified interpreters, can decrease dismissals for failure to meet court deadlines, and can decrease the frequency of attorneys or parties waiving interpreter services or proceeding as if the LEP person is not present, in order to avoid delays. By decreasing interpreter travel time between venues and increasing the number of events being interpreted by individual interpreters, remote interpreting allows more LEP litigants to be served, in more areas, utilizing the same personnel and financial resources, thereby greatly expanding language access.

This statement is not backed up by analysis of the frequency of problems that VRI would presumably solve or evidence of the efficacy of VRI as a solution, and claims about VRI's benefits are also not substantiated. As a result, the conclusion many judicial branch leaders have reached, that VRI has great potential to expand language access, is based on assumptions and projections that sound reasonable, but are not based in serious analysis.

Boosters for VRI assumes two things: 1) That these problems are widespread and frequent enough to make VRI a cost-effective solution; and 2) that there are not other as effective (or more effective) solutions available to address these problems.

Our experience in the courts and our research indicates the problems are not widespread enough to justify any significant use of VRI in California.² There is no data on wait times for in person interpreters, or the number of postponements, or dismissals for failure to meet court deadlines based on lack of availability of interpreters. What is the frequency of such occurrences relative to total interpreter events, or relative to non-interpreter events? Without such data to establish the extent of the problems, conclusions about the potential for VRI to be a *cost-effective* solution are purely speculative. Other solutions should be considered to ensure that court users in all languages receive meaningful access. What simple measures could be taken to reduce these problems through better management and identification of interpreter needs? Would the creation of more full time interpreter positions in languages other than Spanish be a cost effective solution that would provide better access? In other words, can these problems also be addressed through the use of in person interpreters, the recognized and preferred standard according to the Language Access Plan itself?

Finally, and perhaps most important, CFI observes that discussions about VRI's potential here in California fail to consider factors that would lead to the conclusion that VRI is not necessarily a practical or effective solution, except in very narrow applications. We see no discussion of alternative perspectives that call into question VRI's impacts on civil liberties and due process. There are several significant studies that should lead to serious concerns about VRI's use in court proceedings, yet we see virtually no mention (and certainly no serious inquiry) into due process concerns. We also see no meaningful inquiry into how VRI limits participation for LEP court users. These should be foundational concerns, but they receive only the most superficial mention in Judicial Council publications about current or future VRI projects.

Fresno: Contradictory Information on Use of VRI for Spoken Languages

The LAP Report to the Judicial Council for its February 26, 2016 meeting notes, "VRI technology is also already being used in California, specifically in the Superior Court of Fresno County, whose technical guidelines and best practices are also being leveraged for this RFP."

The Fresno Superior Court has been one of the most vocal proponents of adopting VRI for spoken languages, giving the impression that VRI use in Fresno for spoken languages has been substantial and successful. The court has particularly emphasized the ability to use very inexpensive technology. Fresno's Presiding Judge, Jonathan Conklin, has been promoting Fresno's approach and pushing for the Judicial Council and LAP to give courts flexibility to develop their own systems and give judges discretion to determine when VRI is appropriate:

Fresno has a pilot project of what we call our cart. It is a portable cart that we take around to courtrooms. it's a cart with computers, and cell phones and head sets, and it works, and it costs about 900 dollars. So give us the discretion we need to use this technology.

² California has the largest and most professionalized workforce of interpreters in the nation, including approximately 1,000 staff interpreters in dozens of languages, and a large workforce of independent contractors. Certified and registered interpreters are available to meet language access needs in the vast majority of cases.

In March of 2014 when Judge Conklin made these comments at a public hearing on the LAP, the VRI setup he described had barely been tested or used, and the court had not yet reached an agreement with CFI to use VRI for spoken languages. His remarks were apparently based on scripted demos, and the very limited use of the technology for a rare indigenous language where the only potential interpreter in the state was not available to travel to Fresno.³

As with the ASL VRI project, CFI found the facts do not support the claim that Fresno's VRI use is substantial or successful. The court's primary use of VRI is for video remote traffic infractions, using a different system than the cart solution the court is so proud of. For remote traffic proceedings, the interpreter and traffic defendant are in the same location, and connect by video to a judicial officer in a courtroom at another location. Interpreters generally agree that when the LEP party and interpreter are in the same location this lessens, but does not eliminate, the risks and challenges associated with remote interpreting.⁴

CFI received information about the proposed technical set up for Fresno's cart solution during negotiations over VRI implementation. The setup was demonstrated, and CFI consulted with a video conferencing expert on the technology issues. The technology proposed by Fresno was deplorably inadequate; audio and video resolution and connection reliability and speed were very poor. The Region's representatives refused to improve the minimum technology standards and CFI did not accept the proposed standards; Region 3's minimum technology standards were then adopted by the Region unilaterally. See attachment 2 for a detailed analysis technical issues with the minimum technology guidelines adopted by Region 3.

CFI has since been monitoring the use of VRI in Region 3. To date, Fresno is the only court within Region 3 that has implemented VRI for spoken languages, to the best of our knowledge.⁵ No other court has notified CFI that they are using staff interpreters to provide VRI services in spoken languages.⁶ CFI received reports on VRI spoken language events in Fresno as provided in the VRI agreement. Responding to a formal request for information, the Fresno Court reported on May 26, 2015 that it had used VRI for the following interpretation events in spoken languages:

- 1) Six dates in 2013 for Tzotzil interpretation.
- 2) One date in 2014 for Tzotzil interpretation.

³ The language is Tzotzil. The use of VRI for Latin-American indigenous languages, using interpreters who are not professionally trained, is of very serious concern; the problems with this use are beyond the scope of these comments, but will be addressed in future comments from CFI.

⁴ This type of VRI is also used in a few courts around the state for arraignments from jails, with interpreters at the same location as defendants. While this is a form of VRI, it is distinguished from current efforts to develop systems where the interpreter is remote from the LEP court user and remote from the courtroom..

⁵ A few courts are using VRI for video arraignments at jails, or for extremely rare languages, using contract interpreters.

⁶ The agreement between CFI and Region 3 requires courts to notify CFI when they implement VRI and to provide information about the technology being used and interpreter training dates.

- 3) One date in 2014 for Mixteco interpretation (receiver court was in Virginia)⁷
- 4) Two dates in 2015 for Qanjobal interpretation.

Fresno Court CEO Sheran Morton notified CFI on March 16, 2016 that she believes there are no VRI events to report over the past year, since the last reported use in April of 2015, other than those for the remote traffic appearances. The court is delayed in responding in more details to CFI's formal request for information about the use of VRI since the last request, including for the traffic appearances that have not previously been reported to CFI.

Based on the information available to date, it appears that Fresno's cart set up has been used for a total of ten interpretation events over the past 3 years. It has been used only three times since CFI and Region 3 reached an agreement on Video Remote interpreting in August of 2014: once for services provided to another state, and twice to use contract interpreters for Latin-American indigenous language contract interpreters.

This information does not support the representations by Judge Conklin about VRI's successful implementation in Fresno.

Lessons From Florida: Don't test drive a Mercedes if you can only afford a Chevette

The VRI system that has been held forth as the most successful model to be reproduced is the one designed by Cisco Systems as part of a pilot program launched in Florida's Seventh and Ninth Judicial Circuit Courts in 2007, following years of interpreter salary restrictions and hiring freezes.

CFI reviewed available data on the system, looked at how it was being used in Florida's Seventh Circuit Courts and spoke with stakeholders who participated in implementing it on the ground to gather the information reported in these comments.

CFI discovered that the Florida Seventh Circuit's VRI system was inaugurated in Volusia County and its initial setup was developed much in the same way that California is approaching the task now: without integrating interpreters into the process. It was a patent failure and had to be scrapped. Then Cisco sent an engineer to Volusia County to shadow a federally and state qualified court interpreter with 13 years' experience for weeks. Those efforts generated a VRI design that enabled interpretation to be provided in simultaneous mode from an onsite interpreter hub, similar to the system that has since been expounded as a resounding success – and which California, Arizona and other states have pointed to as evidence of VRI's applicability to courtroom use. It relied on expensive equipment on loan from Cisco for the duration of the pilot.

Technologically-speaking, the system Cisco designed for the pilot project worked much better than those implemented in other states. It boasted state-of-the-art digital audio and video – including high-definition cameras that could pan, tilt, and zoom, as well as separate, dedicated, bidirectional sound channels and echo control. It permitted the parties to see and

⁷ According to Fresno Superior Court CEO Sheran Morton, VRI was provided by Fresno Superior Court on December 9, 2014 to the Chesterfield JDR Court in Chesterfield, Virginia. The case number was JA0066512 and the Mixteco interpreter used was Teresa Ramos.

hear each other clearly in real time; and it enabled both simultaneous and consecutive modes of interpretation as well as confidential attorney-client communications and the sight translation of documents.

The Volusia County system served one courtroom in Daytona Beach, one courtroom in Deland about 35 miles away, and a third courtroom at the jail located approximately halfway in between.

CFI has not yet been able to verify the system's exact cost, but Florida's Seventh Circuit courts trumpeted the program as a success and then, once the pilot ended, they deemed the set-up prohibitively expensive and opted not to purchase the equipment that made it work well in the first place. In the words of the interpreter who'd helped CISCO design the Seventh Circuit's VRI system, "they let us test drive the Mercedes then bought the Chevette."

Today, Volusia County's VRI system only functions between one department at the Daytona Beach courthouse and the jail 15 miles away. It is riddled with visual and sound quality and connectivity problems, and judges reportedly avoid using it. It cannot link to the Deland courthouse, to the Ninth Circuit's system or to any other counties. Volusia County's interpreters can just as easily appear in the courtroom instead of over video, and must be present in the courthouse to cover other departments anyways. Interpreters of languages of lesser diffusion must still travel to Volusia County's courthouses or jail to provide their services. In the meantime, the county still does not provide interpreters to LEP users in civil matters.

California threatens to repeat the same pattern:

The costs of setting up a technologically adequate VRI system in California are sure to be considerably higher than the one CISCO installed in Florida: The Florida courthouses were new and fully equipped with integrated, state-of-the-art technology. They were already wired with high-speed Internet networks, secure server-based high-resolution security cameras that could pan, tilt and zoom, built in microphones, and multiple, secured, digital sound channels to record all hearings in lieu of using in-person court reporters. By way of contrast, most of California's courthouses are quite old and do not possess the built-in technology that Cisco relied on in Florida to make its VRI system work.

California courts have eschewed adopting obligatory minimum tech standards for VRI, and the Request for Proposals issued by the Judicial Council for the contract to provide the VRI technology for California courts specifies that the courts are under no obligation to purchase the equipment after the pilot program ends. This leaves the door open for California to follow in the footsteps of Florida – by setting up a high-tech VRI system, proclaiming it a success and adopting it as a permanent "business solution," and then returning much of the equipment that made it function as well as it did and allowed it to link different counties together.

Implementation of VRI for ASL

The program for ASL VRI and the pilot that initiated it are frequently cited as a success story and model to "leverage" as courts plan for implementation of VRI in spoken languages. Given the reliance on these examples as a foundation for expanding VRI use, CFI was interested in

finding out what has been learned about VRI in these applications. We asked ourselves these fundamental questions:

1. To what extent is VRI being used for ASL interpreting and for spoken languages?
2. To what extent is VRI being used for spoken language events in Fresno?
3. What is the evidence of the positive outcomes claimed for ASL VRI, and that the system in Fresno “works” for spoken languages in Fresno “works”?

We sought answers to those questions from the following sources:

1. Formal requests for information to the Judicial Council’s Public Access to Judicial Administrative Records (PAJAR).⁸
2. Formal requests for information to the Fresno Court and Orange Co.
3. Interviews with interpreters involved in both the pilot and ongoing ASL VRI program.

VRI for ASL: Claimed Outcomes and Benefits

CFI’s research and analysis of information received⁹ led to the following conclusions about the validity of outcomes and claimed benefits:

- Use of VRI for ASL has not been widely used and appears to be declining.
- Positive outcomes claimed for ASL VRI are overstated and not based on solid data or analysis;
- Judicial Council staff downplayed and ignored problems identified during and since the pilot, and promoted expansion of VRI despite problems;
- Problems with the ASL VRI project have not been acknowledged in Judicial Council reports and publications or adequately addressed;
- Training of court staff was inadequate and the guidelines were not followed consistently.
- Interpreters did not receive adequate support to ensure that courts followed the guidelines.

⁸ CFI Requests: May 8, 2015, and follow-up on October 13, 2015. Responsive records received July 9, July 17, 2015, November 24, 2015, and February 18, 2016 pursuant to CA Rules of Court, rule 10.500, public access to judicial administrative records, request #001368.

⁹ Research included detailed review of records provided by the Judicial Council and the Fresno court. For ASL VRI, these include data compiled by Judicial Council staff on ASL VRI events, evaluations collected from ASL VRI participants, and emails between ASL VRI interpreters, court interpreter coordinators, and Judicial Council program staff related to the ASL pilot and subsequent ASL VRI events. In addition to this review, we spoke with ASL interpreters who worked in the VRI program. We asked for, and to the best of our knowledge received, all evaluations that form the basis for outcomes that are being used to validate the success of the ASL VRI program, and to pursue expansion of VRI in spoken languages.

- The Judicial Council administrator charged with overseeing the ASL VRI program was hostile toward interpreters who reported problems with VRI use.
- Judicial Council staff promoted the use of VRI for a proceeding deemed inappropriate under the guidelines adopted for ASL VRI.

CFI's findings and analysis in reaching the above conclusions are discussed below. Benefits and positive outcomes asserted in publications promoting ASL VRI are listed, followed by discussion and analysis of Judicial Council publications¹⁰ and other information gathered in the course of our research.

1. CLAIM: "The ASL VRI pilot established that VRI can be used to provide meaningful language access in a variety of courtroom environments if done with appropriate controls [...]"

ANALYSIS SHOWS:

A. The limited number of VRI events and poor evaluation process during the pilot provide insufficient support for the asserted positive outcomes, and in some cases contradict the positive outcomes widely published in association with the ASL VRI program.

The *VRI Pilot Cost Worksheet*¹¹ tracked costs for VRI events during the pilot. The worksheet itself says, "pilot outcomes were determined by a review of evaluations conducted after each VRI Pilot event and at the Pilot's conclusion." Our analysis is therefore focused on information found in the evaluations, and compared and contrasted with information from other sources.

The data shows that a total of 45 ASL interpreting events were scheduled during the pilot period of 13 months (Nov. 2011 through Dec. 2012):

- 42 events in the first six months of the pilot (phase one: Nov. 2011 to April 2012);
- 0 events reported from May to Nov. 2012
- 3 additional VRI events are reported in Dec. 2012

Six of the 45 scheduled events did not proceed with a VRI interpreter, however, leaving 39 events where ASL interpretation was actually provided using VRI during the pilot.¹² There was limited participation in evaluations and incomplete data collection from evaluations. Coupled with the small number of events, these factors call into question the validity of reported outcomes. Additionally, significant information in the data collected is inconsistent with the reported outcomes, as discussed in more detail below. Selective information about the ASL VRI program is presented in Judicial Council publications in a way that gives

¹⁰ Including reports to the Judicial Council for business meetings, online resources at the CA courts website, the Language Access Plan adopted by the Judicial Council, on the Judicial Council's website, and in other documents CFI received about the ASL VRI project from the Judicial Council's Public Access to Judicial Administrative Records office (PAJAR)

¹¹ Provided by PAJAR on July 17, 2015; represented as the record of all VRI events during the pilot.

¹² Several matters were no shows, one court user waived the use of an interpreter.

misleading and consistently positive impressions about the frequency with which VRI is being used, and the degree to which it was found to be appropriate.

The document entitled, *ASL VRI Pilot Outcomes* states that, “82-83% of the 333 events needing ASL interpretation, during the pilot, by pilot courts, were VRI appropriate.” This gives the false impression that VRI was used much more broadly during the pilot. In reality, VRI was actually deemed appropriate in only 45 of the total ASL events, or 7.4% of the time, and was only used in 39 events. This is likely because an event is not appropriate if an in person interpreter can be scheduled, and it appears that in person interpreters were scheduled for 92.6% of the ASL matters in the pilot courts during the pilot.

CFI requested clarification multiple times from the Judicial Council about the number of ASL VRI events during and after the pilot. The Judicial Council responded that it has provided all documents responsive to our requests. No reports are available on the use of ASL VRI for the past three years, after the pilot ended in 2012. CFI has asked the Judicial Council how VRI use for ASL is tracked, but has not received a substantive response to the question.

CFI requested information about evaluations of VRI use since the pilot and was told that there are no records responsive to that request. Despite the very limited use and evaluations conducted during the pilot, and despite problems reported by interpreters since the pilot, it appears that there is no evaluation process currently in place to monitor the quality and efficacy of the ASL VRI program.

B. There is evidence that VRI events were not conducted with appropriate controls; pilot data and other sources show the guidelines were not followed consistently, and mandatory rules and procedures are needed.

The ASL VRI guidelines adopted based on the pilot project are well designed with strong input from professional interpreters. As a result, *if adhered to and followed consistently*, they provide solid guidance on appropriate controls, appropriate and inappropriate case types, and clear, step-by-step procedures to follow in order to protect access and interpreting standards.

Case Type Restrictions and Time Limits

There is evidence that ASL VRI was not “done with appropriate controls,” and that the VRI guidelines did not provide appropriate controls. The guidelines are not mandatory and are not enforceable. Review of pilot evaluations and reports from interpreters indicate the ASL VRI project actually established the opposite of what is claimed; the ASL VRI pilot experience established that *without mandatory rules and procedures*, courts cannot be relied upon to exercise necessary controls.

For example, the Judicial Council adopted a thirty-minute time limit in its *Recommended Guidelines for ASL VRI*, however the *ASL VRI Pilot Outcomes* document states, “85% of reported events were less than 45 minutes.” This implies that 15% of the reported events were over 45 minutes, and evaluation details show that of 26 evaluations up to six events may have exceeded the 30 minute limit. Due to the way the question about the length of VRI events

was framed in the evaluation form, the number of events that exceeded the 30-minute limit is unknown.¹³

With respect to case types, the *ASL VRI Pilot Outcomes* reported that “Draft 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:

- VRI was scheduled for inappropriate case types and inappropriately long periods more often than reported 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.
- 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.
- There was inadequate training of court staff, judges and attorneys to ensure compliance with the guidelines.

Moreover, interpreters reported that the training they received did not prepare them to address these problems with court staff and judges, and that they did not receive adequate support from Judicial Council staff overseeing the project.

Judicial Council Staff Promote Use of VRI outside the Recommended Guidelines¹⁴

After careful consideration and input from professional interpreters, the ASL VRI guidelines were adopted by the Judicial Council to ensure ethical interpreting standards, fairness, access and meaningful participation for deaf and hard of hearing court users.

Lack of compliance with the guidelines is an ongoing concern and demonstrate the need for mandatory rules and limitations on the use of VRI. Emails obtained through PAJAR reveal efforts to push for VRI to be used more frequently, and to have VRI used outside the parameters established in the guidelines. The guidelines are clear on two points:

- 1) VRI is not appropriate if an in person interpreter can be used.
- 2) VRI is not appropriate for complex matters or events that involve testimony.

Yet the lead Judicial Council analyst in charge of the ASL VRI program has promoted VRI’s use outside the parameters in the Judicial Council’s own guidelines. According to emails between Senior Court Analyst Anne Marx, court personnel, and VRI interpreters, in July of 2013 Ms. Marx was concerned about the limited use of VRI (“I was looking at the calendar and not seeing a ton of usage”) and encouraged interpreters to let courts know “if you come across work that could have been done on VRI.” Marx went on to suggest that a court “may be interpreting recommended guidelines very strictly thus limiting VRI” and said outreach to

¹³ Response options did not include “More than 30 minutes” and instead included “26 to 45 minutes” or “More than 45 minutes.” This question was blank in 15% of the interpreter evaluations.

¹⁴ Recommended Guidelines for Video Remote Interpreting in American Sign Language Interpreted Events, adopted by the Judicial Council, <http://www.courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf>

“make this feel even easier maybe would help open doors to discussing opportunities.” Marx was essentially pushing for more VRI use in circumstances where an in person interpreter was available, at locations where the VRI interpreters themselves and other legal certified ASL interpreters are available for in person interpretation.

Emails also show a part of a jury trial (summations) was done using a VRI interpreter in October 2014 in Riverside. This event was apparently deemed to be a unique circumstance, and 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 show her interest in using the opportunity to establish that VRI may be used more broadly, and outside the parameters adopted to protect ethical interpreting standards and access and fairness. “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.” 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...”

In March of 2015, emails show that Ms. Marx was soliciting interpreters to work over VRI in a preliminary examination, an event type that is inappropriate for VRI on multiple grounds. One by one, the interpreters declined, pointing out that the event was not appropriate for VRI and would be better served with an in person interpreter. It is unclear why Ms. Marx contacted interpreters about the Placer court’s request for an interpreter for a preliminary hearing, rather than telling the court that the event was not appropriate for VRI.

2. CLAIM: “Subsequent to the completion of the pilot, use of VRI in ASL events has expanded to more than a dozen courts around the state.”¹⁵

ANALYSIS SHOWS:

The statement gives the impression that use of VRI for ASL is increasing. However all the information we have received and verified indicates that the use of VRI was very limited during the pilot, and has declined substantially since the pilot.

Interpreters interviewed about their experience with VRI consistently reported a decline in the use of VRI during the pilot and post pilot.¹⁶ According to one interpreter, “The demand was less and less. Deaf people wanted a live interpreter.”

CFI requested clarification multiple times from the Judicial Council about the number of ASL VRI events during and after the pilot. PAJAR responded that it has provided all

¹⁵ LAP Implementation Task Force Report to the Judicial Council for the February 26, 2016 Judicial Council meeting.

¹⁶ 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.

documents responsive to our requests.¹⁷ The documents provided report a total of 45 scheduled VRI events during the pilot. The Judicial Council provided no reports on the use of ASL VRI for the past three years, after the pilot ended in 2012. CFI has asked the Judicial Council how VRI use for ASL is tracked, but has not received a substantive response to the question.

Six courts participated in the original pilot: Riverside, San Joaquin, Shasta, Stanislaus, Sonoma, and Ventura. A Judicial Council *VRI Phase 2 Contact List* (dated 10/22/13) lists a total of 13 courts, including the original six pilot courts, and Alameda, Contra Costa, Fresno, Merced, Orange, Placer and Solano.

To the best of our knowledge, VRI is currently being used not at all, or rarely, in five of the six original pilot courts (Riverside, San Joaquin, Stanislaus, Sonoma, and Ventura). Likewise, the best information available to CFI on other courts reportedly using VRI for ASL does not support the claim that use is expanding. Four of the courts added since the pilot are also not using VRI (Orange, Alameda, Santa Clara and Contra Costa).

Riverside was the largest user of VRI for ASL matters during the pilot. However the Riverside court hired two full time staff interpreters for ASL in 2013 after the pilot, and uses VRI very little, if at all. Interpreters and coordinators we spoke with confirmed that Sonoma, San Joaquin, Ventura and Stanislaus are also not using VRI.

In San Joaquin, an interpreter used the equipment at the courthouse during the pilot to provide services for other courts (primarily Riverside), but San Joaquin did not use the equipment to have remote interpreters appear for ASL needs in its own court. Court staff reportedly did not want to deal with carting the equipment around from location to location, and lacked staffing to deal with the set-up, testing, and training, etc. San Joaquin reportedly returned the VRI equipment to the Judicial Council at some point after the pilot ended.

The Orange County Superior Court 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 the Orange County Superior Court (OCSC) 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 Self help and three times for court appearances. The court reported in October 2015 that it had not used VRI for any court proceeding since September 2014.

The Alameda Court is not using VRI. The Santa Clara Court has VRI equipment that was placed with the court by the Judicial Council and is not being used. The Contra Costa Court also has VRI equipment that is not being used.

¹⁷ Nov. 24, 2015 response from PAJAR: “The spreadsheet entitled, ‘VRI Pilot Cost Worksheet’ represents the most complete report of all VRI events conducted during the pilot program.”

CFI is continuing to seek information from the Judicial Council that would substantiate the claims that ASL VRI use has expanded since the pilot. We have requested data on the total number of ASL VRI events as compared with in person ASL events.

4. CLAIM: “Equipment was supplied through the Judicial Council on loan, but it can be purchased for under \$1000.”

This information is found on the Judicial Council website under “Efficiencies and Innovations,” where the Judicial Council highlights the ASL VRI program at the Stanislaus court. In addition to the representation that the equipment can be purchased for under \$1000, the description online says, “All that is required is a laptop, desktop, and/or webcam..”¹⁸

ANALYSIS SHOWS:

Fact: The actual cost of the ASL VRI equipment is approximately \$10,000 per end point. 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

- 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 equipment described as costing under \$1000 does not meet the minimum technology requirements adopted by the Judicial Council for ASL VRI. The “laptop, desktop and/or webcam,” setup is similar to the VRI “cart solution” devised by the Fresno Superior Court for spoken languages, which is discussed in the Fresno Superior Court VRI section of these comments.

This system was reported by Fresno to cost \$4,165 dollars, despite the fact that Fresno’s presiding judge has reported the cost as “nine-hundred dollars,” aka less than \$1000.

Inaccurate reports of equipment costs for both the Fresno and ASL VRI systems are misleading, and yet another example of the kind of misinformation being disseminated about VRI.

5. CLAIMS RELATED TO EVALUATIONS

CLAIM: “All stakeholders were included in the evaluation process.”

ANALYSIS SHOWS:

¹⁸ Video Remote Interpreting (VRI) Project for American Sign Language Interpreting: Stanislaus Court. <http://www.courts.ca.gov/27697.htm> Also posted is a power point presentation by Anne Marx with detailed projections of cost savings associated with VRI. http://www.courts.ca.gov/documents/Stanislaus-VideoRemoteInterpreting-Presentation_ikc.pdf

CFI requested documents related to evaluations conducted during and after the ASL VRI pilot project. The Judicial Council's Public Access to Judicial Administrative Records confirmed that all responsive documents had been turned over.¹⁹

While all stakeholders may have been offered the opportunity to participate in the evaluation process during the pilot, low participation calls into question the conclusions and outcomes presented as factual statements demonstrating ASL VRI's success in expanding language access.

Evaluation responses were incomplete for many events. For a total of 45 scheduled VRI events, including six that did not proceed, evaluation spreadsheets included:

- 48 coordinator evaluations
- 26 interpreter evaluations
- 11 equipment handler evaluations
- 9 deaf or hard of hearing court user evaluations
- 6 judge evaluations
- 6 attorney evaluations
- 3 technical support evaluations

CLAIM: "High judicial officer satisfaction. The majority of those involved strongly agreed that VRI ensures timely access to justice."

ANALYSIS SHOWS:

The small number of evaluations is insufficient to support these conclusions. Judges submitted evaluations for only six of 39 ASL VRI events.

Judges reported that in 3 of 6 events no arrangements were made to accommodate confidential attorney-client communications. In 3 of 6 events judges selected, "Don't know" in response to the question about whether arrangements were made to accommodate confidential attorney-client communications.

Attorneys also submitted only six evaluations, but these did not reflect high satisfaction. Of six evaluations, the level of satisfaction with VRI was reported as:

- 2 somewhat satisfied;
- 2 neutral; and
- 2 somewhat dissatisfied.

Three of six evaluations indicated the proceeding was not conducive to VRI. Attorneys reported the level of their client's satisfaction as:

- 1 Neutral;

¹⁹ There were important omissions in the raw data on the stakeholder evaluations in spreadsheets that CFI received from the Judicial Council in PDF format. Columns showed only partial answers in all evaluations. Some answer columns in the coordinator evaluations were missing altogether; they corresponded with questions on case types, reasons why events were deemed to not qualify for VRI, and info about contacting attorneys and parties ahead of time about the use of VRI for their events. Numbering on some spreadsheets of evaluation responses provided by the Judicial Council did not correspond to the blank evaluation forms that they were supposed to relate to.

2 somewhat satisfied; and
2 somewhat dissatisfied.

Finally, responding to a question about “major challenges of VRI for ASL clients,” attorneys responded in four of six surveys with concerns that appear to raise issues of privacy and lost connection.²⁰

Interpreters also reported that the VRI set-up did not provide the ASL speaker the opportunity for confidential communications in more than one third of the events (9 of 26 evaluations), and answered yes on that question in only five events; responses for remaining events were “don’t know” (8) or were left blank.

6. CLAIM: “Likelihood of using a court certified interpreter went up dramatically with VRI.”

ANALYSIS SHOWS:

Only court certified ASL interpreters were used for remote interpreting during the pilot. However there is absolutely no basis in the evaluation data for the conclusion that the likelihood of using a court certified interpreter went up dramatically, or the claim that VRI increases access to certified interpreters.

There’s no evidence that VRI was used only when the alternative would have been no interpreter, or to use a non-certified ASL interpreter.

Responding to the question, “Would the person likely to be scheduled for the in person interpretation for this event be California court certified?” only one coordinator evaluation responded “No.” 16 responded “Yes”, and the rest were blank.

The *VRI Pilot Outcomes Worksheet* shows there were only four events for which a court certified interpreter would not have been available without VRI.

7. CLAIM: “Most money saved with shared resources. Cost savings, most stemming from reduction in travel. Significant travel expenses eliminated.”

ANALYSIS SHOWS:

With respect to cost savings through shared resources, 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. These results do not support the suggestion that courts were effective in generating costs savings by sharing interpreters.

A primary area tracked in this worksheet was cost savings based on reduced interpreter per diems and reduced travel time and expenses. CFI does not have enough information about the basis for the cost savings calculations to comment on the validity of projected cost savings. We would note, however, that the *VRI Pilot Cost Worksheet* includes projected cost savings

²⁰ The Judicial Council turned over spreadsheets in PDF format, and this did not allow CFI to view the full text of some answers and comments.

for six events in Shasta and Riverside where 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.

VRI clearly has the potential to generate cost savings related to interpreter travel time and expenses. The Judicial Council's projections of cost savings fail to take into account costs associated with providing adequate staffing, including staff with appropriate technical skills, to support VRI use.

The concern is that while courts may save money, 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. 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 also reported 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 and testing requirements. This has been a deterrent to using VRI and a deterrent to complying with the guidelines.

Costs associated with ongoing training for interpreters, staff, and judges have apparently not been calculated as part of the VRI pilot. Failure to build these costs into any VRI program will likely lead to the program's failure, or to problems associated with guideline compliance.

8. CLAIM: Pilot Outcome: There was no consensus among pilot participants regarding major challenges to VRI. *Overall, this indicates no compelling challenge or concern needing attention (emphasis added).*

ANALYSIS SHOWS:

This is one of the most misleading of all conclusions about the ASL VRI pilot by Judicial Council program staff. Information CFI obtained from interpreters and from the evaluations, as well as basic logic, indicates this conclusion is baseless.

In 2014 CFI began talking to 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 declining use of VRI and expressed concerns about the way it was being used. They reported the guidelines for appropriate use were not being followed, and courts were trying to use VRI inappropriately. Some reported feeling powerless to deal with situations where courts were using VRI inappropriately. Inadequate training for all concerned was also cited as a problem, leading to situations that put interpreters at risk of compromising their ability to interpret ethically and ensure complete and accurate communication.

CFI worked with two interpreters on a letter to bring these issues to the attention of the Judicial Council's LAP Working Group during the development of the statewide Language Access Plan. The interpreters verified 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 reaction to the letter was swift and unexpected. Anne Marx, Senior Court Services Analyst and lead staff for the Judicial Council on the ASL VRI pilot immediately sent an email to Judicial Council staff for the LAP, Douglas Denton, asking him not to distribute the letter. Both interpreters were then contacted by Denton and asked to confirm whether or not they wanted the letter to be distributed as public comment. In the meantime, according to both interpreters, Anne Marx contacted them personally, and was clearly unhappy about their decision to report these experiences. Their professional conduct was called into question, and one of the interpreters reported that Marx was angry and rebuked her for writing the letter. Both interpreters, who are highly regarded for their professional integrity, reported that they felt very uncomfortable with the “over reaction,” and decided to withdraw the letter -- albeit neither said there were any errors in the letter or that they did not stand behind what the letter said.

The letter included the following list of issues that were reported to CFI by VRI interpreters:

Working remotely using video conferencing in the California superior courts we have experienced the following types of problems that interfere with our ability to 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.*

See Attachment 1 for full text of the December 4, 2014 letter.

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 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, a reckless approach when dealing with fundamental rights and LEP parties' ability to meaningfully participate in court proceedings.

Civil Liberties, Due Process and Video Remote Interpreting

California's Judicial Council and its Language Access Plan promote VRI as a vehicle for expanding access to qualified interpreters. Yet experiences in Fresno and with ASL VRI show that, rather than expand interpreter services into previously uncovered civil matters or ancillary services such as self-help centers, California courts have thus far leveraged VRI primarily to provide services where in-person interpreters were already being used, for American Sign Language, and for very rare languages (often using interpreters of unknown credentials). Nationwide and in California, courts' drive to implement VRI has been governed principally by a desire to cut costs on interpreter services and travel expenses.

Most troublesome of all, however, is that the Judicial Council has consistently refused to adopt binding guidelines on VRI's use. It has barreled forward with VRI with no genuine consideration for VRI's impacts on meaningful language access and due process and – as evidenced by its handling of ASL VRI – it has actively suppressed criticism and ignored VRI's inappropriateness for most judicial processes. This is particularly alarming given the important concerns raised by experiences with VRI reported in these comments and the findings of the few bona fide studies that have been conducted on the use of VRI in judicial settings thus far.

VRI and Civil Liberties: Impacts on Meaningful Access

The Judicial Council's push to implement VRI in California courtrooms reflects a profound disregard for the multiple roles played by court interpreters on the ground. Interpreters play a broad range of functions beyond interpreting what happens on the record. Attorneys, LEP court users, clerks, mediators, social workers and other ancillary staff rely on the presence of court interpreters for essential, day-of-court communications immediately associated with the given court proceedings.

While some might argue that VRI could conceivably be used for off-the-record communications, experiences to date demonstrate that VRI is rarely if ever made available for such communications.

More importantly, California courts have already ruled that "nothing short of a sworn interpreter at the defendant's elbow" will satisfy California's constitutional guarantees to due process and linguistic presence for LEP criminal defendants.

The American Civil Liberties Union, the California Public Defenders Association and nine other legal and immigrant rights organizations underscored this concern in comments submitted to the Judicial Council LAP Working Group regarding plans to implement VRI in the courts: "[P]rivate conferring between a defendant and his counsel with the help of a court interpreter will become artificially controlled, more limited, and potentially impossible" with VRI, they wrote. These concerns appear to be borne out by the limited experience with ASL VRI discussed in these comments.

A compelling argument can be made that the right to be physically present and have an in-person interpreter should be extended to all LEP court users, including in civil matters:

When state courts fail to provide competent interpreters to LEP people in civil cases, the costs are high. People suffer because they cannot protect their children, their homes, or their safety. Courts suffer because they cannot make accurate findings, and because communities lose faith in the justice system. And society suffers because its civil laws [...] cannot be enforced. [...] The constitutional guarantees of access to the courts, due process, equal protection and the right to counsel also require that interpreters be provided.²¹

Even when a case is "just a continuance," substantive matters may be discussed such as charges and allegations, basic facts about the case, legal procedures, case strategy, plea negotiations, bail, restitution, probation conditions, the placement of minors outside the family home, discovery issues, settlements, child custody and support, or compliance with court orders, to name a few.

For both criminal and civil matters, realities on the ground are that calendars are full and court personnel are busy. If language services aren't readily available such that parties can just lean over and whisper or step out into the hall, then barriers such as logistics and equipment availability, or equipment needed for the next case, will inevitably impede access and the ability of LEP court users to communicate and participate.

²¹ Laura Abel, Language Access in State Courts, Brennan Center for Justice, July 2009

VRI and Civil Liberties: Impacts on Due Process

There exists a grave dearth of studies on how VRI impacts interpreting quality in judicial settings in the United States. What little data is available is quite limited, but signals reasons for significant concern. The few studies conducted in the United States on the impacts of virtual judicial proceedings have focused on its use in immigration court, where the practice is most widespread. Without accounting for the impact of VRI specifically, they've found that video mediated communication in video-conferenced proceedings adversely impacted the judicial fact-finding process, severely constricted immigrants' participation in their own deportation defense, and led to higher rates of negative outcomes for asylum seekers.

An article published in the *Harvard Law Review* in 2009 reported that:

"The use of videoconferencing as a wholesale replacement for in-person proceedings within the immigration context ... fails to provide access for immigrant respondents because it obstructs the fact finding process and prevents immigration courts from fulfilling the adjudicative functions for which they were designed. ... The fact finding process is consistently defined to include evaluations of credibility and demeanor. Research on video-mediated communications strongly suggests that videoconferencing prevents the accurate assessment of customary indices of these characteristics."

As such, the authors conclude, "its use as a fact finding method is a violation of immigrants' due process rights."

A subsequent study found that asylum seekers were significantly less likely to receive positive dispositions if their hearings were conducted over video rather than in person: Whereas 50% of the in-person applicants were granted asylum, that number dropped to 29% for those who'd appeared remotely.

More recently, UCLA law professor Ingrid V. Eagly found that video hearings led to severely depressed engagement with the judicial process. "When compared to similarly situated detained televideo respondents, detained in-person respondents were a remarkable 90% more likely to apply for relief [and] 35% more likely to obtain counsel."

VRI and Civil Liberties: Impacts on Communication Quality and Content

While the research that's focused on video-mediated hearings in immigration court have "highlighted the possibility that the use of videoconferencing in legal proceedings reduces the meaningfulness of the proceedings, ... this may be even more likely when proceedings combine videoconferencing and interpreting," writes Sabine Braun, leader of the Assessment of Video-Mediated Interpreting in the Criminal Justice System (AVIDICUS) project, which has conducted the most thorough investigations into the topic thus far.

The first controlled experiment to evaluate VRI's impact on interpreters' output was conducted by Barbara Moser-Mercer in 2003 using conference interpreters. It determined that "remote interpretation increases an interpreter's mental workload and leads to fatigue and decline in performance faster than live interpretation," and found that the concomitant decline in interpreters' renditions began to peak after 15-18 minutes when interpreting remotely.

The AVIDICUS project was launched in 2007 with funding from the European Union and is perhaps the only such project in the world to begin to systematically research VRI's use in judicial settings from an academic rather than a cost-cutting point of view. It has conducted a number of successive research projects throughout Europe throughout the past nine years that apply solid academic research principles to VRI in judicial settings and incorporate specialists in the fields of linguistics, law and technology along with experienced court interpreters and other stakeholders. AVIDICUS has consistently found that VRI magnifies the difficulties inherent in face-to-face interpreting and adds its own, additional challenges.

One such study involved a series of simulated police investigator suspect interviews using accredited legal interpreters with at least five years' experience interpreting for the police and officers with extensive backgrounds in interviewing suspects and working with interpreters. In each simulation, the investigator and the person acting as suspect were co-located in the police interview room, with the interpreter linked in from a remote location. The first round took place in 2009. The results were analyzed and helped inform cursory guidelines for the EU. Adjustments were made to the technology and the physical placement of the participants and screens, and the same police investigators and interpreters were provided training on working over video, including strategies for addressing common difficulties encountered during the first cycle of the study. Both the officers and the interpreters had also gained some real-world experience working with VRI by the time AVIDICUS conducted its next series of simulations in 2011. In these simulations, different configurations were compared, including simulations with the interpreter co-located with the officer and the "suspect" at a separate location, with the interpreter co-located with the "suspect" and the officer at the other location, and with the officer and "suspect" together and the interpreter located elsewhere.

Despite the improvements in set-up technology and design, and the participants' extra training and experience, AVIDICUS uncovered that significant problems persisted to varying degrees under the different VRI configurations as compared to face-to-face interpretation in each of the categories studied. These categories included message content (omissions, additions, coherence and inaccuracies), linguistic content (e.g. terminology, grammar, register), paralinguistic content (e.g. articulation, hesitation, repetition, false starts) and talk coordination (turn taking and overlapping speech).

Distortions of meaning, for example, were twice as high when the interpreter was separated from all parties versus face-to-face interpretation. "By far the largest group of distortions are conceptual distortions of what was said, involving confusion of facts and distortions of the speaker's intention." The interpreters themselves tended not to notice such distortions, suggesting "that the interpreters worked very close to the limit of their mental capacities."

In general, these and other AVIDICUS studies have raised numerous red flags about the impact of VRI on interpreter renditions, credibility of the LEP person whose speech is being interpreted and the dynamics of the given judicial process.

The pernicious impacts of VRI in judicial settings are clear even in such relatively basic, two-way communications in a controlled environment outside the courtroom and with experienced interpreters and a high-tech set-up such as AVIDICUS's simulated police suspect interviews.

One can only imagine how those problems must be magnified when a set-up such as Florida's is applied to actual court hearings. Not only must interpreters contend with the various additional challenges posed by VRI -- such as lack of reliance on visual cues, the unavailability of traditional strategies for assessing meaning, controlling speech flow and pace, procuring clarifications or repetitions, and the like -- but they must also "mix their own show" when using the type of complex set-up that allows for the simultaneous interpretation of proceedings.

With set-ups such as Florida's, interpreters must maneuver cameras remotely, switch between at least three different sound channels, and adjust volume and zoom settings while switching between simultaneous and consecutive interpreting modes. This must inevitably result in a heightened cognitive overload well beyond what was observed in the AVIDICUS studies.

This phenomenon was directly observed by CFI and reported to us from authentic experiences in a Volusia County courtroom.

CFI president Ariel Torrone travelled to Volusia County and tested out the equipment. Mr. Torrone is a state and federally certified English-Spanish interpreter with 26 years' experience interpreting in the courts, who has provided consultation services to the NCSC for 14 years on the development of federal and state certification exams. He also works regularly in broadcast TV. His observations led him to conclude that interpreters couldn't possibly hope to provide adequate renditions for courtroom hearings using Florida's set-up.

Mr. Torrone's sense of trepidation was borne out during proceedings that took place in Volusia County during Florida's VRI pilot program. According to a court staffer who was present in the courtroom that day, three interpreters of languages of lesser diffusion appeared remotely for separate misdemeanor arraignments. The interpreters worked in Arabic, Bengali and Gujarati, respectively, and all appeared via videolink from Orlando. In each case, the interpreters made multiple mistakes when operating the sound controls -- by forgetting to unmute themselves before interpreting the LEP parties' utterances to the court or, worse, forgetting to switch to the channel that allowed for confidential attorney-client communications and inadvertently broadcasting some of those communications to the entire courtroom.

In studies of real-world court hearings in which VRI was used, AVIDICUS found that numerous issues complicate the work of the interpreter including inherent difficulties of the task of interpreting itself, lack of understanding of the interpreting process by the other participants, and a lack of professional recognition of the interpreter resulting in poor working conditions and pay, among other factors.

According to studies conducted under AVIDICUS 2, VRI "exacerbate[s] these difficulties and even add[s] more" because interpreting through video conferencing is more complex and exacerbates interaction problems, "the interaction is weakened by the videoconference setting, and when problems arise, they need more time to be repaired [...]"

We argue that videoconferencing can create an additional barrier to the persons in the remote site who are already isolated by the language barrier, resulting in an increased isolation in their own sphere. Finally we argue that, because videoconferencing exacerbates interaction problems, interpreters have to be aware that the speaking turn system is altered in the distributed bilingual courtroom, the rapport between the participants is weakened by the videoconference setting and the problems of hearing (and understanding) are aggravated.²²

Taking all of this into account, AVIDICUS raised concerns about “the impact of the ‘on-demand’ culture with regard to interpreting services on interpreting quality.” It warns that “where current trends of outsourcing as a way of cost-saving have led to a decline in the interpreters’ overall working conditions, there is a high risk that qualified interpreters who are able to cope with the challenges of [video-conference]-based interpreting are not available in sufficient numbers. [...] It is therefore necessary to consider not only the impact of VC-based interpreting on the interpreters’ working conditions, but also the impact of the current working condition of legal interpreters [...] on the quality and viability of VC-based interpreting.”

California’s LAP ITF and the Judicial Council would do well to heed this warning.

The LAP recognizes that in person interpreters are preferred because this best protects LEP rights and meaningful participation. However, whereas the Judicial Council has vigorously pursued launching VRI on a larger scale, it has consistently ignored calls for better pay and working conditions for its interpreters. The Judicial Council should commit greater attention and resources to recruitment, retention and training initiatives in order to attract and retain skilled interpreters who are available, as staff and contractors, to meet California’s language access needs reliably, and in person.

CFI appreciates the opportunity to submit these comments.

²² Avidicus 2 (2011-2013), Sabine Braun, University of Surrey, Page 45

December 4, 2014

Chief Justice Tani Cantil-Sakauye
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102
tani.cantil@jud.ca.gov

Hon. Maria Rivera & Hon. Manuel Covarrubias
Co-Chairs, Language Access Plan Working Group
c/o Douglas G. Denton (douglas.denton@jud.ca.gov)
455 Golden Gate Avenue
San Francisco, CA 94103

Dear Chief Justice, Justice Rivera and Judge Covarrubias:

It has come to our attention that the American Sign Language (ASL) Video Remote Interpreting (VRI) program is being held up as an example of VRI's potential to expand access, and that the working group has discussed mentioning the ASL VRI project in the draft Language Access Plan (LAP) as an example of VRI's success.

We write to apprise the Judicial Council and the Language Access Plan Working Group of problems we have experienced with the use of video remote interpreting for ASL interpretation in the California Courts.

We were in a small group of approximately five ASL interpreters who volunteered for the VRI pilot project and purchased our own equipment as independent contractors in order to have the option of providing our services remotely. To our knowledge we are the only two interpreters trained as part of the program who are still available for VRI work.

We are Registry of Interpreters for the Deaf (RID) certified with the requisite Specialist Certificate: Legal (SCL), with extensive experience providing in-person interpreting in the courts and other settings.

We recognize that the intention of the ASL VRI program is to increase reliable access to competent interpreters when it is not possible to access an in-person interpreter, and we support that goal. The implementation of VRI and quality of service to the deaf community has been problematic, however, for the reasons discussed in detail below.

The ASL VRI program should be modified and improved to protect the rights of the deaf and hard of hearing who need access to the court system. We urge the LAP working group and the Judicial Council to take a more critical look at VRI issues and recognize the need for:

- more rigorous and enforceable standards and training of court staff and bench officers; and
- improvements to protocols and equipment.

As interpreters, we must work within a strict code of ethics that requires our interpretation to be complete and accurate; and we must ensure that our communication is effective for the deaf/hard of hearing court user.

Working remotely using video conferencing in the California superior courts we have experienced the following types of problems that interfere with our ability to 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.

As professional interpreters, we pledge an oath in every proceeding to protect the communication we are responsible for. We must be accurate and complete, and we must notify the court of impediments to our performance. The simple fact of being in a remote location and separated from the other participants in the proceedings makes this extraordinarily more difficult. We want to emphasize that 2-D interpretation on screen is not equivalent to 3-D face-to-face communication. This is why the ASL VRI guidelines make clear that using an in-person interpreter is always preferred, and VRI use should be limited to very short and non-complex communications.

As noted above, these guidelines are not being followed. The ASL VRI program, as currently implemented, is not being used as intended and does not ensure reliable services, safeguard the rights of the deaf community, or allow interpreters to meet the standards in our code of ethics.

We also suggest the LAP working group and Judicial Council should reconsider the use of independent contractors, who purchase their own equipment, for the delivery of this very sensitive service. Independent contractors are competing for work in the market place and may fear they will not receive work if they raise issues with the VRI program or report impediments to their performance. Additionally, having purchased equipment, they are invested in the need to pay for and validate that investment.

To make sure VRI is used appropriately and is effective, interpreters used must be top-of-the line in terms of skills and experience, should receive more extensive training for VRI work, and should be provided a secure working relationship that supports their efforts to ensure effective communications and ethical performance.

We believe this can be much better achieved using employees recruited and trained for VRI interpreting. We note that courts generally do not use employees for ASL interpretation as broadly as they do for spoken language interpreting. We submit that, in conjunction with improvements to the VRI program, hiring ASL interpreters as employees, and creating full-time benefitted positions would be an effective approach to improve reliable access to competent ASL interpreters.

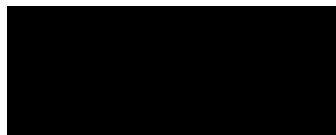
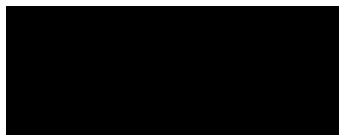
We recognize that the courts are generally under-resourced and that staffing shortages at the courts impact some of the administrative problems outlined above. Having a set of protocols or standards for VRI use is meaningless, however, if the standards and protocols are not followed or cannot be appropriately implemented and applied.

It is critically important that the Judicial Council and individual courts recognize these shortcomings, address these issues, and limit use of VRI to situations where competent interpretation would otherwise be unavailable.

Until such time as these matters are addressed, we respectfully submit that the ASL VRI interpretation project should not be held up as a model of VRI's success. We stand ready to work with the courts and the Judicial Council to make the goal of expanded and meaningful access a reality.

Please feel free to contact us for further information.

Sincerely,



cc: Sharif Rashedi, President
Deaf Counseling, Advocacy & Referral Agency

Ariel Torrone, President
California Federation of Interpreters

Region 3 Plan for Video Remote Interpreting (VRI)

Technical Minimums and Equipment Inadequate for Remote Interpreting

CFI consulted with a video conferencing technology expert to evaluate the technical elements of the Video Remote Interpreting (VRI) plan. This analysis is based entirely on our best understanding of the plan's technical minimums, the equipment set up demonstrated by the Fresno Superior Court, and our technical expert's review and feedback on the equipment and conferencing set up.

The equipment is cobbled together using outdated, consumer grade devices that are inadequate for the task of remote interpreting including wireless phones, ipads, laptops and webcams connected through an unsuitable, poor quality conferencing medium over the Internet.

This technical set up will not provide the remote interpreter with the audio/visual information needed to allow for complete and accurate interpreting, as required to provide meaningful access and protect due process. The plan sends video over Internet, and voice over the plain old telephone network. Video and voice will be out of sync, making it extremely difficult (if not impossible) for interpreters to hear and combine audio and visual cues, as is essential for comprehension at the level needed in legal proceedings.

The goal of VRI should be to enhance the communications. The Region 3 VRI plan does not. The technical issues described below add up to a system without Network quality of service (QOS) and will result in: unreliable connections, unclear/garbled sound, echoes, pixelated images, frozen images, lag between speaking/hearing (like a satellite call), out-of-sync voice and video.

1. Poor Quality Video/ Inadequate Visual Information for Interpreters

The following technical elements will result in unacceptable video quality and inadequate visual information as is necessary for remote interpreting.

Cameras: Poor video camera resolution (360p). Should be *at least* 720p. Lower means poor image quality. 360 pixel height is far lower resolution than even standard broadcast TV. It will be blurry; it would be surprising if it was not.

Conferencing/Network Solution: The sharing and conferencing medium, WebEx, is not designed for high quality audio or video, both of which are critical to an interpreter. WebEx does not support wideband audio for voice and the video maximizes compression by sacrificing quality. Networking "off-net" means the connection is subject to the ups and downs and shared nature of the Internet.

Quality of Devices: Computers, laptops, ipads and webcams are consumer grade rather than professional and do not support high-resolution video or wideband audio necessary to ensure an interpreter is able to see and hear well enough to interpret *completely and accurately* from a remote location. Processing speed required for laptops and ipads is not specified.

Displays for interpreter and in courtroom: Display for interpreter is small, laptop size. It will be hard for interpreters to see clear video and interpreter will be unable to use laptop at the same time (i.e. to look up a term). Display in courtroom is large, but mirrored through Webex at low resolution it will not provide a clear image. Interpreter and courtroom participants should have a dedicated video endpoint.

2. Poor Quality Audio

The wireless phones (Cisco 7921) are outdated technology no longer supported by the manufacturer. Combined with Webex as a conferencing medium, audio will be "narrowband," producing low quality sound that makes it harder to distinguish sounds, recognize speakers and understand accents, and makes remote interpreting more mentally fatiguing, leading to mistakes, delays and inefficiencies.

Wideband audio is necessary for remote interpreting. "Wideband audio" refers to a digital technique for carrying fuller, better-sounding and more complete representation of the audio signal making it is easier to distinguish sounds, recognize speakers, and understand accents. It makes conferencing and interpreting less mentally fatiguing, more accurate and more efficient.

The technical minimum standards for wireless phones are unacceptable: *"Standard G.711 and G.729 CODECS are acceptable. G.722 wideband CODEC is not required and is converted automatically to narrowband (e.g. G.711 and G.729) by VoIP systems for "off-net" calls traversing the PSTN."*

G.711 is standard telephone quality and G729 is worse than AM radio. It is cell phone quality or worse. G.722 wideband CODEC should be required. Courts should not be doing "off-net" calls traversing the PSTN. To avoid loss of quality, they should keep the audio in-house, on-network.

In addition to the inherent limitations associated with the Public Telephone Network, the nature of a wi-fi phone means there is serious risk of interference from other wireless networks and voice will be competing for wi-fi bandwidth with the other wi-fi devices such as laptops, ipads, even Bluetooth headsets. Because there will be multiple microphones (everyone has their own phone, all in one room) there is a risk of horrible echo issues if a person's voice is "heard" by multiple phones/microphones.

3. Other Issues and Comments

Business class video conferencing for VRI is typically the realm of specialized equipment, not a webcam on a PC or tablet with a camera. It means cameras, speakers, microphones, and control of the system all in one specialized piece of equipment, and "on-net" conferencing through an internal datacenter. The video solution in this plan is no better than telephone interpreting and may be worse (more complex, less reliable, more distracting, poor image quality, etc, etc).

Remote interpreters need a stable view to clearly observe the participants and receive visual cues from individual speakers and the entire courtroom. For a camera to be useful it needs to show the person's face, with good lighting and appropriate angle. A tablet on the table (or hand held and shared by two parties, as proposed) will be unsteady, angled up, looking up the nose of the speaker with ceiling lights behind them, making the video view extremely poor quality. In addition, cameras on PCs/Laptops cannot be controlled remotely, no way to move the camera if the person is not correctly positioned or moves. "USB" cameras are not capable of capturing the entire courtroom because webcams are built to be personal.

An iPad is a consumer device that has a consumer camera. Fine for sharing a document perhaps, but not appropriate for voice or video. Both the wi-fi phone and iPad are portable devices with limited battery life. What happens when a battery dies or a wi-fi connection has a problem? Do you postpone the case? What is the cost associated with that lost time? How many of those types of problems are acceptable? At what point do you stop cobbling together a solution and look at serious equipment?

Region 3's plan says, "Court has a wireless infrastructure solution in place" – not all wireless is created equal. Wireless has evolved quite a bit in the last few years, even since the end-of-sale of the 7921 phones. Enterprise grade wireless networks are capable of much, much more now. We engineer (plan/design/deploy) those networks differently. We test the coverage signals and throughput. These are issues that come into play. Will these devices have problems if placed in the wrong place in the room? Has this been tested?

The people talking all have Cisco Wi-fi phones and headsets. We've all dialed a conferencing service for voice, but all of those phones are sharing the same wi-fi network. Has this been tested? Six phones and a tablet and video, plus any other devices in the courtroom, all sharing the same wi-fi, potentially interfering with each other, plus interference from other devices, presents a high risk of static and feedback.

Attachment 3, 5 pages
Joint letter from ACLU and CA Public Defenders Assoc.

September 26, 2014

Via Electronic and U.S. Mail

Chief Justice Tani Cantil-Sakauye
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102
tani.cantil@jud.ca.gov

Joint Working Group for California's Language Access Plan
Judicial Council of California
Court Operations Services
Operations & Programs
c/o Douglas G. Denton
455 Golden Gate Avenue
San Francisco, California 94102
douglas.denton@jud.ca.gov

Re: Video Remote Interpreting (VRI) in California Courts

Dear Chief Justice and Joint Working Group:

We write to express our concern about current plans to deploy video remote interpreting ("VRI") in California's state courts.

The California state courts serve the largest population of limited-English proficient (LEP) individuals nationwide. Over the past thirty years, the courts have developed a strong foundation in law and practice to provide certified and otherwise qualified interpreters in many proceeding types, including criminal, juvenile and some civil proceedings. The courts have also established certification standards to ensure a consistent level of competent, in-court interpretation services.

We are concerned that current proposals by trial courts in the Central Valley, as well as the promotion of VRI initiatives by the Judicial Council, lack sufficient safeguards to require adequate technology and to limit VRI to instances in which in-court interpretation is otherwise impossible. It has been reported that these plans are not supported by a comprehensive cost-benefit analysis and fail to give due consideration to the implications for LEP communities. Specifically, from our understanding, the Fresno Superior Court and other Region 3 courts are launching VRI without any clear and enforceable statewide standards or conditions for its appropriate use. This anticipated use of VRI raises several serious concerns.

The Region 3 courts are deploying VRI using inadequate technology. It has been reported that the Region 3 courts are set to implement a conferencing system and equipment with poor video quality and narrow-band audio that will compromise the integrity of the communications and make a complete and accurate interpretation virtually impossible.

There appear to be no clear restrictions or guidance in place to ensure VRI is used appropriately. We are informed that the Region 3 courts intend to use VRI not just for unusual circumstances when no in-person interpreter is available or for one-on-one, out-of-court communications, but for in-court communications more generally, including evidentiary proceedings, regardless of the complexity or number of speakers. Further, the courts need not prioritize the use of in-person interpreters nor ask for the consent of litigants before relying on VRI, which is a marked departure from recognized standards for court interpretation.¹ To the extent that VRI is appropriate to expand access under limited circumstances—for emergency hearings and short matters that cannot be delayed, or for extreme language minorities for whom no interpreter is able to appear—these circumstances and proceeding types must be clearly and narrowly defined to ensure that remote interpreting is not misused.

Most important, due process and meaningful access to the courts may be threatened by the expanded use of remote interpretation. We caution against expanding the use of video appearances and video-mediated interpreting when serious questions remain whether the currently contemplated protocols and technological capacity adequately protect a number of constitutional rights. The right to competent interpretation in criminal proceedings is well established based on the fundamental connection between linguistic presence and due process rights.² Article I, section 14 of the California Constitution requires that a non-English speaking defendant be provided the assistance of an interpreter throughout the proceedings and “nothing short of a sworn interpreter at defendant’s elbow,” will satisfy this constitutional guarantee.³ Unfettered access to a competent interpreter is also closely associated with the right to effective assistance of counsel: “if the right to be [linguistically] present is to have meaning [it is imperative that every criminal defendant] possess ‘sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.’”⁴

The need for competent interpretation in civil courts is also well established. As stated in a recent publication by the Brennan Center for Justice:

¹ See e.g. Court Interpreters Program of the Administrative Office of the Courts, Judicial Council of California, Recommended Guidelines for Video Remote Interpreting (VRI) for ASL-Interpreted Events, (2012) page 2, (“all parties must consent, on the record, to using VRI”).

² See *United States ex rel. Negron v. New York* (2d Cir. 1970) 434 F.2d 386, 389-90 (holding that a criminal defendant’s right to an interpreter affects fundamental due process rights and implicates key considerations of “fairness, the integrity of the fact-finding process, and the potency of our adversary system”); *People v. Carreon* (1984) 151 Cal.App.3d 559, 567 (“Various courts and commentators have noted denial of interpreter services impairs not only the defendant’s due process rights, but also his rights to confront adverse witnesses, to the effective assistance of counsel, and to be present at his own trial.” (citations omitted)).

³ *People v. Menchaca*, (1983) 146 Cal.App.3d 1019, 1026.

⁴ *United States ex rel. Negron*, 434 F.2d at 389 (quoting *Dusky v. United States* (1960) 362 U.S. 402, 402).

“Across the country, people are stuck in a Kafkaesque nightmare: they must go to court to protect their children, homes or safety, but they can neither communicate nor understand what is happening. [...] When state courts fail to provide competent interpreters to LEP people in civil cases, the costs are high. People suffer because they cannot protect their children, their homes, or their safety. Courts suffer because they cannot make accurate findings, and because communities lose faith in the justice system. And society suffers because its civil laws – guaranteeing the minimum wage, and barring domestic violence and illegal eviction – cannot be enforced.”⁵

While high quality video technology can help expand interpretation services that otherwise could not be delivered, clear standards are necessary to avoid unnecessary and inadequate VRI that undermines the right to competent and effective interpretation. Just as anyone who has attempted to attend a meeting as the sole person participating via video conference knows, one’s ability to participate in an otherwise in-person conversation is hampered by not being in the same room as other participants. Separating interpreters from LEP court users and other proceeding participants raises multiple issues that can impact accuracy, access, and linguistic presence. Hand gestures and other visual cues are necessary elements of communication that may be disrupted by VRI. Nonverbal cues are essential for an interpreter to understand meaning and accurately interpret what is being said. They are also critical for communicating with both the court and LEP witnesses (e.g., to request a repetition, a clarification or a pause for an LEP party to confer with her attorney, to remind a witness to pause to allow for the interpretation, or to wait before answering a question while an objection is pending). These critical nonverbal elements occur simultaneously, as the interpretation is taking place, and may be unreadable or go unnoticed using VRI, particularly with the technology currently available for the proposed expansion. The already difficult task of understanding verbal statements for precise translation necessary to court proceedings will undeniably be made more difficult by this separation and by less-than-perfect audio conditions. Private conferring between a defendant and his counsel with the help of a court interpreter will become artificially controlled, more limited, and potentially impossible depending on the VRI equipment and conditions. The issues outlined above, as well as more subtle issues related to the impacts of technology on communication, require further evaluation and review to ensure LEP rights are protected under any expanded use of VRI.

Given these concerns, recent research has recommended that “videoconference technology [for remote interpreting] . . . be used with utmost care and that further research on its effects is required before it can be used more widely.”⁶ In fact, the limited research available on video-mediated communication raises serious questions about potential harm to defendants and litigants from experimentation in the area of video appearances and other video mediated communications, including VRI. A Chicago study on the use of video conferencing for immigration courts hearings found that:

⁵ Laura K. Abel, Brennan Center for Justice, *Language Access in State Courts*, Brennan Center for Justice at New York University School of Law (2009) page 1.

⁶ See Braun, S. and J. L. Taylor, *Video-Mediated Interpreting: An Overview of Current Practice and Research in Videoconference and Remote Interpreting in Criminal Proceedings* (2011), University of Surrey, Guildford, UK, page. 29.

“Respondents relying on interpreters had a greater frequency of problems created or exacerbated by videoconferencing and were more likely to receive negative dispositions.”⁷

Considering the above concerns, we provide the following recommendations:

1. **VRI should not be implemented without statewide and enforceable standards in place to protect the integrity of the judicial process and the rights of all parties.** We urge the Judicial Council to adopt clear and enforceable rules on VRI to safeguard LEP rights as part of the language access plan. Standards for VRI must take into account the inherent limitations of video-mediated communications, set technological minimums, and ensure that the use of in-person interpreters is prioritized, as is already the case in other standards that have been adopted.⁸ Such standards should be established through a process that involves careful study of existing research as well as input from a broad array of stakeholders, and provides for testing and pilot programs to evaluate the success of implementation.
2. **The Judicial Council should adopt rules and budget policies to ensure that individual courts do not implement VRI before a statewide plan can be finalized.** We note that although the Judicial Council is currently developing a language access plan for California that could address the use of VRI, and has created mechanisms for public input, individual courts are already forging ahead with their own plans and adopting their own practices for implementing VRI before the statewide plan is even finalized.
3. **No assumption should be made that VRI is the one-stop solution to providing interpretation services.** We are encouraged by current efforts to adopt a statewide language access plan and to expand interpreter services to include all civil proceedings. We warn, however, that use of VRI is not an appropriate solution for expansion of interpreter services in most cases. Overreliance on VRI could create a two-tier system of justice, with second-rate access and compromised due process rights for LEP populations.

In sum, we oppose expanding the use of VRI in California courts before the language access plan is completed and without standards and rules that are based on validated research and that maximize access to justice and protect due process, and—except in rare situations where VRI is the best alternative to having **no** certified interpreter—we specifically object to the implementation of VRI in the Fresno Superior Court and other Region 3 courts given the reported technological shortcomings in their current equipment and capacity. Given

⁷ *Access to Courts and Videoconferencing in Immigration Court Proceedings* (2009) 122 Harv. L. Rev. 1181, 1193 n.46 (citing Legal Assistance Found. of Metro. Chi. & Chi. Appleseed Fund for Justice, *Videoconferencing in Removal Hearings: A Case Study of the Chicago Immigration Court*, pages 40-44 (2005), available at http://www.chicagoappleseed.org/projects/immigration/VideoConfReport_080205.pdf).

⁸ See Recommended Guidelines for Video Remote Interpreting (VRI) for ASL-Interpreted Events, *supra* n.3, page 3.

the serious risks to the integrity of communications, accuracy and fairness, VRI should not be pursued or justified as a cost-cutting opportunity. Rather, it should be implemented to enhance and expand language access to ancillary services outside the courtroom. Its use for court proceedings should be restricted until such time as the courts have completed a thorough, realistic analysis of its true costs, including its impacts on civil liberties and the integrity of the judicial process.

Thank you for your consideration and please do not hesitate to contact Julia Harumi Mass, Senior Staff Attorney with the ACLU of Northern California, at (415) 621-2493, if you have any questions.

Sincerely,

American Civil Liberties Union of California

California Public Defenders Association

Centro Legal de la Raza

Chinese for Affirmative Action

Immigrant Legal Resource Center

La Raza Centro Legal

Lawyers' Committee for Civil Rights of the San Francisco Bay Area

Legal Aid Society-Employment Law Center

Mujeres Unidas y Activas

Molly O'Neal, Santa Clara County Public Defender

Pangea Legal Services