

June 22, 2016

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

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

Dear Justice Cantil-Sakauye and Council Members:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Ariel Torrone". The signature is written in a cursive style with a large, sweeping initial "A" and "T".

Ariel Torrone  
President

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