

May 19, 2016

To: Hon. Mariano-Florentino Cuéllar, Chair
Language Access Plan Implementation Task Force

Dear Justice Cuellar and Esteemed Members of the Task Force:

Many of the LAP Implementation Task Force's projects propose to address interpreter recruitment, and the LAP ITF has prioritized pursuing VRI (without adequate study of implications)¹ to address alleged shortages of interpreter "resources." Yet the need to incentivize this career through competitive compensation continues to be ignored.

CFI's membership includes employees and contractors with decades of experience in the interpreter marketplace. In our view, courts, the Judicial Council and many stakeholders focus on the need to recruit new, skilled bilinguals to the profession, but without recognizing the high level of proficiency required and the reality that interpreters who reach this level of skill and proficiency have many options. Not enough attention is paid to attracting and retaining the current available workforce of interpreters. We regularly see that talented and experienced interpreters prefer to work in the private sector, federal and immigration courts, and other state agencies where they can earn much more. Additionally we see highly skilled interpreters leave the career altogether to pursue other more rewarding work.

CFI continues to maintain that interpreter wages and working conditions are the elephant in the room. The LAP ITF can discuss recruitment all it wants, but the courts can never hope to make any progress without addressing core issues such as the vast disparities in interpreter pay between the state trial courts and the federal government and private sector, or between staff interpreters and other California court workers whose jobs require commensurate (or lower) levels of skill.

In the courts' efforts to recruit more potential interpreters, "some fundamental realities have been overlooked: the court and other public institutions have failed to develop a desirable work environment for the individuals who have the highest likelihood of passing an examination," wrote Wanda Romberger and William E. Hewitt in an article for the National Center for State Courts ten years ago. "In other words, we have failed to create a desirable destination on the career path for professional interpreters."²

Providing competitive compensation structures and a professional work environment are *indispensable* for attracting and retaining enough interpreters to meet the California courts' growing language access needs while maintaining acceptable standards of service.

¹ See public comments submitted by CFI to the LAP on March 21, 2016.

² "Wanted: Career Paths for Court Interpreters," *Future Trends in State Courts*, National Center for State Courts, 2006, p. 77.

Interpreter Compensation: A Legacy of Institutional Neglect

Competent interpretation requires the highest levels of proficiency in at least two languages, extensive professional training, years of practice in the different modes of interpretation, and knowledge of a broad spectrum of specialized subject matter. Certified court interpreters in California must pass one of the toughest professional certification exams in the country – with pass rates that are significantly lower than those of the State BAR exam – and must comply with ethical codes and continuing education requirements. Almost half (45%) of North American interpreters hold a Master’s degree or higher, according to a 2010 study by InterpretAmerica.³

Yet compensation rates for California court interpreters have not kept pace with demands for these skills. Interpreter pay in the state’s courts is far lower than in other sectors that compete for certified legal interpreters, and lags behind salaries for other court professionals with comparable levels of education, skill and training.

Staff interpreter salaries have increased by only 10 to 14 percent (depending on the Region) over the past fifteen years since interpreters entered the employment system – equivalent to less than 1% per year on average. By comparison, the nationwide Consumer Price Index for Urban Wage Earners rose by 38.8% during that same period⁴ -- and we can expect that the increase was all the more drastic in California.

The rift between wages and living costs is even greater for state court interpreters living in urban areas of California such as the San Francisco Bay Area, Sacramento and Los Angeles, where the need for interpreter services are in highest demand.

To compound matters, many interpreters do not enjoy full-time employment and many others work as independent contractors, without benefits or protections. This is particularly true of interpreters of languages of lesser diffusion. In Northern California, almost two-thirds of interpreter employees said they have to supplement their income with extra work to make ends meet, according to a 2013 survey by CFI.

Yet demand remains high for certified legal interpreters in all languages in a marketplace that includes the federal courts, state agencies and the private market, among others, where compensation rates continue to outpace those of the California trial courts.

³ Nataly Kelly, Robert G. Stewart, and Vijayalaxmi Hegde, “The Interpreting Marketplace: A Study of Interpreting in North America,” InterpretAmerica (June 2010), <http://www.interpretamerica.net/publications>.

⁴ The CPI-W is prepared by the Bureau of Labor Statistics and is what the Social Security Administration uses to determine COLA increases for social security recipients to ensure that their purchasing power is not eroded by inflation. See <https://www.ssa.gov/news/cola/automatic-cola.htm>.

Today, California courts pay contract interpreters \$282.23 per day. That rate has not changed in nearly nine years.⁵ Salaries for full-time interpreter employees range from \$70,969 to \$79,114. By way of comparison:

- Working in legal depositions, certified interpreters earn more than two to four times the state court rate (\$500-1200/day).
- Federal court salaries for staff interpreters are up to 94% higher -- nearly double California's -- as they go up with experience. In California, federal court salaries start at over \$100,00 and go up to \$150,000.⁶
- The federal court per diem rate for certified interpreters is \$418 – 48% higher than in state court.⁷
- Immigration courts recently raised their per diem rate to \$425 – although they do not require that their interpreters be certified. In the San Jose-San Francisco-Oakland area, full-time immigration court interpreters earn up to 109,592.⁸

California's trial courts cannot reasonably expect to compete without taking robust measures to bring compensation rates up significantly and ensure that pay remains competitive by implementing and expanding salary steps in all regions and providing regular COLA's.

Separate and Unequal: The Interpreter Employment and Bargaining System

The California Legislature took an important step towards granting interpreters parity with other court personnel when it passed the Trial Court Interpreter Employment and Labor Relations Act (Interpreter Act) granting employment rights to interpreters working in California courts in 2003. Full time benefitted positions have only been broadly available since 2005,⁹ but in that short time, the employment system has created greater stability and reliability in the delivery of interpreter services. Interpreter use and expenditure data show measurable improvements including reduced reliance on unqualified interpreters, and steady increases in the overall number of certified and registered interpreters.¹⁰ A 2010 report

⁵ The last increase was in September of 2007.

⁶ *Starting pay* for federal staff is \$111,000 for Los Angeles; \$118,000 for San Francisco Bay Area; \$106,000 for Sacramento; \$108,000 for San Diego. Grade 14 of the Judicial Salary Plan tables for California Regions. <http://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates>

⁷ See <http://www.uscourts.gov/services-forms/federal-court-interpreters>.

⁸ Step 10 on Grade 12 of the federal Judicial Salary Plan.

⁹ Prior to passage of the interpreter Act there were fewer than two dozen staff interpreters statewide. Today there are approximately one thousand employee interpreters, and approximately 600 are full time.

¹⁰ The number of certified interpreters available to the courts has actually improved significantly since the employment system was implemented. After a sharp decline in the number of certified interpreters between 1995 and 2000, the number of certified interpreters has steadily increased. The total number of certified interpreters has increased 41%, with significant increases in high-demand languages including Spanish (30%), Mandarin (67%), Korean (72%), Russian (89%), Armenian (87%), Vietnamese (22%), and Cantonese (23%).

commissioned by the Judicial Council found that interpreters who are court employees perform significantly more work at a lower cost than independent contractors.¹¹

Despite this progress, wage stagnation has hampered recruitment and interpreter shortages are increasing again. This is in part because the Interpreter Act institutionalized a separate and unequal employment system for interpreters vis-à-vis other court personnel: Unlike other court employees, who bargain over wages and benefits directly with the local courts where they work, interpreters are organized into four large geographical regions, and bargain one multi-employer contract per region with the Judicial Council. This hybrid model has been problematic on numerous fronts¹² and has led to significant inequities in the treatment of interpreters compared to other court staff.

Not only have California court interpreter wages fallen farther and farther behind rates paid by the federal courts and in the private sector, but interpreters continue to suffer large disparities in compensation compared to other court professionals whose functions require similar or lower levels of education and skill.

California court interpreters working as contractors and employees have not received regular cost of living increases, and raises have been few and far between. As indicated above, salary increases have averaged out to less than 1% per year since interpreters gained employment rights. Increases in the per diem rate for contractors have risen at about half that rate: Interpreters had to wait a decade before receiving an increase in the late 1990's, and have only received one more increase since then, when the Judicial Council raised the per diem by a mere 6.5% in 2007 to match increases employees had bargained.

A majority of staff interpreters, those working in two out of four bargaining regions, also do not enjoy wage steps or a salary range based on professional development or length of service that the vast majority of court employees receive. In Los Angeles and the San Francisco Bay Area, a certified interpreter who teaches legal interpretation at the university level and has 20 years of service earns the same as a brand new interpreter who just passed the certification exam and is setting foot in a courtroom for the first time.

In San Francisco, where the Judicial Council is located and where the cost of living is higher than anywhere else in the state if not the country, full-time court interpreter employees earn \$76,419 per year. Court reporters, however, make \$107,741 to \$114,109 annually, and their salaries are set to increase to \$110,821 to \$117,450 on July 1st of this year. Thus, a new court reporter is set to make 45% more than an interpreter who's been working for the San Francisco Superior Court for 20 years. A veteran interpreter will earn 54% less than a court reporter with commensurate seniority.¹³

¹¹ Ernest L. Cowles, Carole W. Barnes and Britte H. Livingston, "2010 Language Need and Interpreter Use in California Superior Courts," Institute for Social Research, California State University, Sacramento (May 2010), <http://courts.ca.gov/documents/language-interpreterneed-10.pdf>.

¹² For a more detailed treatment of this topic, see the public comment CFI submitted to the Commission on the Future of California's Court System on Feb. 1, 2016, re. Trial Court Employment and Labor Relations.

¹³ See <http://www.sfsuperiorcourt.org/sites/default/files/pdfs/SFOCRA%20MOU%20FINAL.pdf>

This disparity holds in courts statewide, as interpreters earn significantly less than court employees of similar status performing similarly demanding work. The table below shows the current difference in pay between a court reporter with five years of service and an interpreter with ten or twenty years of service.

| | Yearly Salary of Court Interpreter with 10-20 Years of Service | Yearly Salary of Court Reporter with 5 Years of Service | Difference |
|-------------------|--|---|------------|
| Alameda Co. | \$76,419 | \$92,532 | +21% |
| Los Angeles Co. | \$75,488 | \$94,944 | +26% |
| San Francisco Co. | \$76,419 | \$114,108 | +49% |
| Sacramento Co. | \$74,580 | \$102,660 | +38% |
| Orange Co. | \$77,568 | \$94,956 | +22% |

Comprehensive information on compensation increases over the years for court personnel throughout the state is not available, but a sample of available data shows interpreters consistently lag well behind other court staff in this regard as well. The table below shows some of these disparities for the largest counties in Region 2 (coastal Northern California), for example, for 2003 through 2012.

| CFI Interpreters | Santa Clara Court Employees | Alameda Clerks | San Francisco Clerks | San Mateo Clerks | Contra Costa Co. Court Reporters |
|------------------|-----------------------------|----------------|--|------------------|----------------------------------|
| No steps | Steps | Steps | Steps | Steps | Steps |
| 6.5% | 15% + \$4,250 in bonuses | 12% | 11.5% + \$6,000 in bonuses & reopeners | 14% | 12% + 10% "equity" |

Interpreter job satisfaction and longevity and retention in the state courts as a career are highly impacted by both compensation and work conditions, according to multiple surveys conducted by CFI. Decades of neglect and failure to make steady progress in improving pay rates and structures are seen as a lack of recognition and respect by court interpreters. A majority of interpreters report their overall experience in the state courts is that their work and skills are unrecognized and undervalued. Lack of respect for professional standards and conditions needed to do our jobs are also cited as a significant problem by California state court interpreters. Coupled with uncompetitive and stagnant compensation, the message to interpreters is that they are second-class members of the court's workforce.

A Case Study on What *Not* to Do: Santa Clara County

Santa Clara County provides a suitable and timely blueprint for how to alienate interpreters from working for the California courts.

Santa Clara has the highest number of immigrants per capita of any county in Northern California.¹⁴ More than half (51.6%) of its 1.9 million residents speak a language other than English at home, according to U.S. Census data for 2010-14.¹⁵

Yet Santa Clara County is also home to Silicon Valley. It has the highest median income and the highest costs of living in the state -- where median prices for a house or condo were 82.8% higher than in California as a whole in 2013, and median rents were 40.8% higher.¹⁶

Not surprisingly, Santa Clara County is experiencing a critical shortage of court interpreters, particularly in Spanish. The median income in Santa Clara County was \$93,500 in 2014 and is expected to reach \$111,900 by next year.¹⁷ Court interpreters, however, make \$76,419 with no regular COLA's and no wage steps.

Santa Clara County courts' recruitment and retention problems have been compounded, however, by lousy working conditions.

For years, the court's Interpreter Services Manager has failed to hire enough interpreters to meet the court's needs, refused to abide by professional standards such as providing team interpreting¹⁸ for trials or separate interpreters for defendants and victim witnesses (a practice determined by case law to be a reversible error¹⁹), used favoritism and retaliation in work assignments, ignored limitations on the use of non-certified interpreters, and maintained a generally adversarial posture towards language access and interpreters.²⁰ CFI tried working with the Santa Clara County administration on these issues for years, to little avail.

In 2014 and 2015, Santa Clara County's court experienced a series of retirements and resignations. Four full time staff interpreters retired (more are expected to follow suit soon);

¹⁴ The Santa Clara County Office of Human Relations' Citizenship and Immigrant Services Program reports that Santa Clara County is "the demographic center of immigration in Northern California," and that "[o]f California's 58 counties, only Los Angeles County and Orange County have more immigrants than Santa Clara County." "Bridging Borders in Silicon Valley: Summit on Immigrant Needs and Contributions," Dec. 6, 2000, p. 22, found at <http://www.immigrantinfo.org/borders/index.html>.

¹⁵ See <http://www.census.gov/quickfacts/table/PST045215/06085>.

¹⁶ This is according to 2013 figures. See http://www.city-data.com/county/Santa_Clara_County-CA.html.

¹⁷ "Santa Clara County Has Highest Median Household Income in Nation, But Wealth Gap Widens," George Avalos, *San Jose Mercury News*, 8/11/14, http://www.mercurynews.com/business/ci_26312024/santa-clara-county-has-highest-median-household-income.

¹⁸ Team interpreting has long been recognized as a best practice for longer hearings, given that interpreter fatigue leads to errors in accuracy after the interpreter has been interpreting simultaneously for 30 minutes without a break, and rise steadily thereafter.

¹⁹ *People v. Aguilar* (1984) 35 Cal. 3d 785 [200 Cal. Rptr. 908, 677 p. 2d 1198].

²⁰ See CFI's Dec. 23, 2015 letter to Santa Clara County Presiding Judge Risè Jones Pichon, attached.

two full time interpreters left for positions at courts in areas with lower costs of living; another pro tempore employee interpreter resigned due to workload stress; and several interpreters who had been working for Santa Clara as contractors accepted jobs at courts elsewhere in the Bay Area with better working conditions. Other Santa Clara County court interpreters have had to take time off after losing their voices (with one suffering permanent damage), and one went on disability related to workload stress that impacted her pregnancy.²¹

Poor working conditions have led to Santa Clara County gaining a reputation among court interpreters as the worst county in which to work in the entire Bay Area. Many contractors and employees at neighboring counties who had taken cross-assignments there stopped offering their services.

In an April 4, 2016 letter to Court Executive Officer David H. Yamasaki, nine such interpreters cited low pay, unacceptable work conditions, and “a significant lack of professional courtesy from the interpreting department” as reasons for withdrawing or limiting their availability to work for the Santa Clara courts.

As a result of the critical interpreter shortage, Santa Clara County’s court is now spending inordinate premiums contracting Spanish interpreters through an agency -- at a rate of \$1200 per full day (\$150 per hour; increased from \$140 in January 2016). This rate is more than four times what employees earn for the same work. Documentation obtained by CFI shows the court spent \$25,480 for Spanish interpreters through an agency over the six-month period (mid-December 2014 through mid-June 2015) for 182 hours (the equivalent of only 23 full days) of service. Spending for Spanish interpreters through the agency nearly tripled in the next six months to \$60,783.44 (from July 2015 to January 2016).

Despite bringing in a few interpreters at these premiums, the court is regularly operating with a severe shortage of Spanish interpreters. Most concerning are the effects the interpreter shortage has had on the court and LEP court users:

- Judges and attorneys are experiencing significant delays, making it difficult to process cases. Spanish-speaking parties in particular are being subjected to disparate treatment, as their cases are delayed or continued.
- Interpreters are unable to provide full and meaningful access, as they are rushed among courtrooms and facilities and pressured to cover too many cases in too little time.
- Criminal cases are often heard without an interpreter or experience irregularities that could lead to reversals, such as improper waivers or sharing the same interpreter between adversarial parties.
- Family law courts are regularly being left without coverage.

²¹ Ibid.

- Unlawful detainer, small claims and other civil calendars are not being staffed, and interpreters are being borrowed from other departments and facilities on an ad hoc basis.
- Parties are using unqualified family members or acquaintances to “interpret,” thereby denying due process to LEP parties and undermining the integrity of judicial proceedings.

Recently, a case came to light of a family without legal representation evicted from their home because they had been waiting all morning in the hallway outside the courtroom, without access to an interpreter, and the landlord’s attorneys went into the courtroom and obtained a default judgment against the family.

It is extremely rare to find out when a case is adversely affected due to inadequate interpreting services. No one would have known about this particular case if weren’t for the Western Center on Law and Poverty and the Law Foundation of Silicon Valley which had been working with the family and reported the incident to the Judicial Council at its last public meeting on March 22 of this year.

The critical situation in Santa Clara County’s courts portends dire consequences for LEP court users well beyond what we can hope to discover.

Following two segments on a local NBC newscast in January, and many months of ongoing denial of services to the public, the Santa Clara County court recently decided to offer contract interpreters the federal pay rate in hopes of addressing the problem.²²

The court is not providing a concomitant retention stipend to staff interpreters to prevent further attrition, however, and already one as-needed employee has quit to provide services as a private contractor at the higher rate. The agency providing interpreters to the Santa Clara County court at a rate of \$1200 per day pays its contract interpreters \$800 per day to work there -- almost twice the federal rate that the court itself is now offering.

Incentivize Court Interpreting as a Profession: The Recognized Approach to Meeting California Courts’ Language Access Needs that Still Hasn’t Been Applied

The importance of providing competitive compensation and attractive work conditions has been recognized for years as a critical requirement for recruiting and retaining a professional workforce of interpreters capable of meeting California courts’ language access needs.

At least as far back as 1998, the Judicial Council itself identified establishing per diem rates for interpreters commensurate with the federal rate as a goal, as per minutes of a meeting it held on Feb. 27 of that year. In 2000, it included in its strategic planning the goal of increasing interpreter pay to match the federal rate.

²²http://www.calinterpreters.org/index.php?option=com_content&view=article&id=104:2016-santaclara-shortage-media&catid=23:news&Itemid=112

Six years later, in its 2004 Report to the California Legislature on Interpreter Usage, the Judicial Council lamented that “compensation for interpreters in the state trial courts still lags behind the federal courts,” and recommended “increased rates and an improved incentive based rate structure to attract and retain court interpreters.”

The California Commission on Access to Justice likewise highlighted that the “few interpreters with the unique skills and motivation necessary to become certified ... are likely to be in highest demand in the private sector, where compensation is much higher. Additionally, the federal court system is a more attractive alternative for such interpreters given the higher rates available.”²³ It recommended that California’s courts bring interpreter pay up to par: “Additional funding should be sought so that compensation can be set at levels that encourage people to pursue careers as court interpreters.”

Legal organizations have come to the same conclusions: “Courts should address shortages of qualified interpreters by compensating interpreters at a level sufficient to attract them,” wrote Laura Abel of the Brennan Center for Justice at New York University School of Law in 2009.

CFI respectfully reiterates the recommendations it made on this issue as part of its public written comments to the Judicial Council and the Joint Working Group for California’s Language Access Plan on April 15, 2014 and again on Sept. 29, 2014, when the LAP was still a draft:

- Improve interpreter compensation for employees and independent contractors, using federal salary and per diem rates as points of comparison;
- Implement salary steps and create promotional opportunities for interpreters;
- Establish higher pay levels for languages that are in high demand but for which there is currently a limited supply of interpreters.
- Establish full time regional positions, including mandatory cross assignments as allowed under Govt. Code 71810(c), at a higher salary in languages that are in high demand with a limited supply of interpreters.

The Judicial Council and courts should also consider, in consultation with CFI, the need for changes to the regional bargaining structure, and should undertake initiatives to support courts in establishing a more competitive wage structure for court interpreters statewide.

Today, California finds itself at a crucial crossroads. The Judicial Council and its LAP Implementation Task Force should rise to the challenge of addressing the state’s growing language access needs while cementing California’s position as a national leader in the provision of comprehensive, meaningful language access services in its courts.

²³ “Language Barriers to Justice in California,” Sept. 2005, p. 39 & 40.

Those who've conducted comprehensive analyses of the California courts' language access needs and understand the high levels of education, skill and dedication required of court interpreters have been reporting the obvious solution to California's interpreter recruitment and retention problems for two decades now: incentivize court interpreting as a stable, lucrative profession and a career with a future. The time has come to heed their call.

Thank you as always for your consideration and the opportunity to comment.