



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-086

For business meeting on May 21, 2021

Title

Language Access Plan: *Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language–Interpreted Events*

Agenda Item Type

Action Required

Effective Date

May 21, 2021

Rules, Forms, Standards, or Statutes Affected

None

Date of Report

April 22, 2021

Recommended by

Information Technology Advisory
Committee
Hon. Sheila F. Hanson, Chair
Hon. Louis R. Mauro, Vice-Chair
Advisory Committee on Providing Access
and Fairness
Hon. Kevin C. Brazile, Cochair
Hon. Luis A. Lavin, Cochair
Hon. Victor A. Rodriguez, Chair, Language
Access Subcommittee

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Executive Summary

The Information Technology Advisory Committee (ITAC) and the Advisory Committee on Providing Access and Fairness recommend approving the *Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language–Interpreted Events*, updated under the direction of an ITAC working group following a revision process that included public comment. In response to the COVID-19 pandemic, courts have implemented remote video solutions to ensure access to justice and protect the health and safety of court staff, court users, and judicial officers. The VRI guidelines for spoken language have been updated to support VRI in both physical and virtual courtrooms and to provide guidance to courts and the

public to ensure that remote interpreting allows limited English proficient court users to fully and meaningfully participate in court proceedings.

Recommendation

The Information Technology Advisory Committee and Advisory Committee on Providing Access and Fairness recommend that the Judicial Council, effective May 21, 2021:

1. Approve the *Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language–Interpreted Events*, which provide guidance for courts and the public on use of VRI in both physical and virtual courtrooms and include practical steps to support successful VRI for spoken language; and
2. Direct Language Access Services staff to:
 - a. Regularly report on the progress of VRI usage and the need for refinement of the VRI guidelines; and
 - b. Identify funding needs for VRI.

The revised guidelines are attached at pages 7–19.

Relevant Previous Council Action

In January 2015, the Judicial Council adopted the *Strategic Plan for Language Access in the California Courts*¹ (Language Access Plan, or LAP) to provide recommendations, guidance, and a consistent statewide approach to ensure language access throughout the courts. To increase limited English proficient (LEP) court user access to qualified interpreters, the LAP allows for the use of remote interpreting. The plan states, “[t]he use of in-person, certified and registered court interpreters is preferred for court proceedings, but courts may consider the use of remote interpreting where it is appropriate for a particular event. Remote interpreting may only be used if it will allow LEP court users to fully and meaningfully participate in the proceedings.” (LAP Recommendation 12).

On March 15, 2019, the council approved updated VRI guidelines following a spoken language pilot for VRI that took place in 2018.²

On September 24, 2019, the Judicial Council adopted a process for Language Access Signage and Technology Grants and directed Language Access Services staff to solicit and review grant

¹ Judicial Council of Cal., *Strategic Plan for Language Access in the California Courts* (2015), www.courts.ca.gov/documents/CLASP_report_060514.pdf.

² Judicial Council of Cal., Advisory Com. Rep., *Language Access Plan: Video Remote Interpreting (VRI) Pilot Project and Recommended Guidelines for VRI* (Feb. 20, 2019), <https://jcc.legistar.com/View.ashx?M=F&ID=7073170&GUID=9B54E3BD-1C5B-4DF4-A4A4-2B943ADFE512>

applications and develop recommendations for review and approval by PAF, ITAC, the Technology Committee, and the Judicial Council.³ Under the grant program, courts are able to apply for grants for VRI if they agree to comply with the council's VRI guidelines.

At the Judicial Council meeting on July 24, 2020, the Chief Justice directed the Technology Committee to recommend a proposal for allocating a \$25 million budget appropriation in the Budget Act of 2020 designated for modernizing court operations through the use of technology.⁴

At the council meeting on September 25, 2020, the council approved the allocation of the \$25 million for 13 approved program categories—including remote appearance technology—as recommended by the Technology Committee. In addition to direct allocations to courts, this funding also supports the Branchwide Remote Appearance Technology Program, which provides grants for courts to implement remote technology solutions, including VRI.

Analysis/Rationale

VRI is a helpful service delivery mechanism that allows LEP court users to receive remote interpreting services. Because of the COVID-19 pandemic, courts have successfully used VRI to provide remote interpreter services for hearings. The revised VRI guidelines will help to build on and standardize these efforts, including establishment of a statewide VRI program.

In December 2020, an ITAC working group was formed to review and update the VRI guidelines. The working group comprised five ITAC members, the PAF Language Access Subcommittee chair, court Information Technology representatives, and Judicial Council staff.

The VRI guidelines for spoken language have been updated to reflect virtual courtrooms, available technologies, and current practices and to provide guidance to the courts and the public regarding practical steps to support successful video remote interpreting for spoken language. The guidelines do not attempt to represent rules or standards, but instead provide key and other considerations for courts to support VRI, including proper training and recommended minimum technology specifications.

Benefits of VRI include:

- Increased access to qualified (certified and registered) interpreters, especially in languages of lesser diffusion;
- Allowing court users to see and talk to an interpreter in their language without extended delay, despite not being in the same room—or even the same city;

³ Judicial Council of Cal., Advisory Com. Rep., *Language Access Plan: Signage and Technology Grants* (Sept. 9, 2019), <https://jcc.legistar.com/View.ashx?M=F&ID=7675626&GUID=F2CCA714-356A-41B7-82B5-05C058CE0D6E>.

⁴ Judicial Council of Cal., captured captioning (July 24, 2020), p. 16, <https://jcc.legistar.com/View.ashx?M=E3&ID=711582&GUID=90001AF2-7CEE-4F0F-906B-29A03ED9CB43>.

- Allowing court users to resolve short, noncomplex, and uncontested hearings, even when onsite interpreters are unavailable, lowering the need to reschedule court visits; and
- Allowing private and confidential VRI conversations, similar to in-person interpreting.

The ITAC working group substantially revised Appendix A, Minimum Specifications for Remote Interpreting, to support VRI under different scenarios in both physical and virtual courtrooms (e.g., where one, more than one, or all participants are remote). The guidelines were also revised throughout to recommend that proper training take place for all VRI participants to help support successful VRI events and that easy-to-understand instructional material be developed for LEPs in multiple languages so they may fully and meaningfully participate in remote court proceedings. The guidelines were revised to provide flexibility in the use of software and equipment, to help the branch move toward standardization of VRI practices across the state, and to ensure quality remote interpretation.

Policy implications

VRI is a priority area for grants under both the Language Access Signage and Technology Grants program and the Branchwide Remote Appearance Technology Program. The updated VRI guidelines will need to be followed by all courts that use VRI and will support all courts to better serve the public as they expand their current VRI efforts. There will also be an ongoing need for development of VRI training and resources, including development, updating, and sharing of best practices to promote successful VRI events.

Comments

On January 27, 2021, ITAC approved the revised VRI guidelines to circulate for public comment. The guidelines circulated for comment from January 28 through February 16, 2021.

In response to the proposal, 16 comments were received (2 agreed, 3 agreed if modified, 6 opposed, and 5 did not indicate). Comments came from the following:

- American Alliance of Professional Translators and Interpreters
- California Access to Justice Commission
- California Federation of Interpreters and Interpreter Guild of America
- Dependency Legal Services
- Individual court interpreters (five commenters)
- InterpretAmerica
- Legal Services Organizations (eleven agencies signed onto one letter)
- National Association of Judiciary Interpreters and Translators
- Superior Court of California, County of Orange
- Superior Court of California, County of Riverside
- Superior Court of California, County of San Francisco
- Superior Court of California, County of San Joaquin

The Superior Court of San Joaquin County and Dependency Legal Services agreed with the guidelines and stated that they do address the stated purpose. As suggested by Dependency Legal

Services and other commenters, language has been added to the guidelines to more clearly recommend that courts work with attorneys to ensure that VRI solutions allow for privileged communications before, during, and after hearings.

A few commenters agreed with the concept of the guidelines but requested other modifications, such as the need to recognize the digital divide (the gulf between those who have ready access to computers and the internet and those who do not), which makes it difficult or impossible for many Californians to participate in court proceedings convened digitally. The committees agreed and included the recognition of the digital divide in the guidelines. The guidelines also recommend that the courts make alternative solutions available (e.g., telephonic interpretation or workstations at the court) if the LEP court user does not have access to the minimum technology necessary for effective virtual participation as described in the guidelines. A commenter also recommended that “after COVID-19 is over, to the degree it will be, it is important to continue to encourage in-person hearings when necessary (e.g., jury trials).”

Several comments requested more specific rules, standards, and consistency in platforms and technology from the courts. However, the purpose of the guidelines is to provide courts with VRI guidance and minimum technology specifications to allow flexibility. The committees recognize the ongoing need for training and best practices to support the recommended guidelines and to ensure the successful use of VRI. Several of the comments submitted provide helpful and useful suggestions that will be incorporated into best-practice material for VRI.

A common assertion from commenters was that in-person interpretation should always be the preferred method of interpretation. The committees recognize that in-person interpreting is preferred but that remote interpreting also provides an important service and safety mechanism to provide LEP court users with access to a qualified interpreter.

In response to comments, the committees recognize that obtaining LEP court user consent to using VRI on the record is an important best practice. The section Suggested Language for the Judicial Officer When Considering Objections Related to Remote Interpreting has remained in the revised guidelines.

Comments from interpreters and interpreter associations also described challenges with VRI equipment and the implementation of VRI in the courts. The committees recognize that during the COVID-19 pandemic, courts were forced to quickly adapt and develop remote technology options to ensure the safety of judicial officers, court staff, and court users. Therefore, technical issues with sound and connectivity were foreseeable, but the committees anticipate that the use of VRI will improve over time if properly supported with training, best practices, and continual improvements to VRI communication and technology.

The Superior Court of San Joaquin County identified that courts may eventually attain cost savings with VRI by reducing travel time and mileage expenses incurred by interpreters traveling for in-person hearings. VRI would also aid the court in increasing its pool of available certified

and registered interpreters, which may lead to more competitive negotiations of contract interpreter rates.

The guidelines were revised after public comment and were approved by ITAC and PAF in March and the Technology Committee in April.

Alternatives considered

These are suggested guidelines for remote interpreting for spoken language based on current best practices. As such, they should be subject to updating and revision by the Judicial Council to accommodate advances in technology that will support the delivery of interpreter services to LEP court users and help ensure quality communication with LEP court users.

Fiscal and Operational Impacts

The Governor's Budget Act of 2020 provided funding to support trial courts for court interpreter services and establishment by the Judicial Council of a VRI program. The Language Access Signage and Technology Grants and the Branchwide Remote Appearance Technology Program also provide funding and grants to courts to support increased use of VRI. The revised VRI guidelines will help courts to build on and standardize VRI efforts, including establishment of a statewide VRI program.

The Court Interpreter Data Collection System (CIDCS) allows courts to track VRI as the method of interpretation. The data collected in CIDCS is used to support budget change proposals, including augmentation requests for the Court Interpreter Program (Trial Court Trust Fund 0150037) and other language access projects, such as funding for VRI equipment.

Language Access Services is working with the National Center for State Courts to develop VRI training modules and materials for courts, interpreters, and LEP court users to support VRI and these guidelines. Training and materials will be developed with experts, including court interpreters. In conjunction with trainings, best-practice material for VRI events will also be developed, shared, and periodically updated.

Language Access Services will also regularly report on the progress of VRI usage, work with the advisory bodies on the need for any future refinement of the VRI guidelines, and identify any additional funding needs for courts to support VRI equipment and implementation.

Attachments and Links

1. *Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language–Interpreted Events*, at pages 7–19
2. Comments chart, at pages 20–118

Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language– Interpreted Events

CALIFORNIA JUDICIAL BRANCH

MAY 21, 2021



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The Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language–Interpreted Events was adopted by the Judicial Council on May 21, 2021. This document was prepared under the direction of a working group of the Information Technology Advisory Committee, which reviewed and updated the guidelines in fiscal year 2020–21. These guidelines were adapted from the *Strategic Plan for Language Access in the California Courts*, which was adopted by the Judicial Council on January 22, 2015. The guidelines were last revised in March 2019, following a VRI pilot conducted in 2018.

For electronic copies of these guidelines and for more information, visit www.courts.ca.gov/VRI.htm.

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Introduction

California is home to a very diverse population, with over 200 languages and dialects spoken within its borders. Approximately 7 million of its residents are *limited English proficient* (LEP), meaning they read, write, speak, or understand English less than very well. Federal laws, such as Title VI of the Civil Rights Act of 1964 and Executive Order No. 13166, 65 Federal Register 50121 (Aug. 16, 2000), ensure that these individuals have meaningful access to any program or activity receiving federal financial assistance by prohibiting discrimination on the basis of race, color, or national origin. Accordingly, LEP individuals must be able to access the court system in a meaningful manner.

To address this need, in January 2015, the Judicial Council adopted the *Strategic Plan for Language Access in the California Courts* (Language Access Plan, or LAP), which provides the foundational components for ensuring that all LEP court users in the state have equal access to justice and presents guidance and recommendations to help courts expand their language services at the local court level. Two main components of the LAP are to increase (1) qualified interpreter services in any court-ordered, court-operated proceeding; and (2) the availability of language access services to all court users. The use of technological solutions to expand such services is a component of this plan and is specifically addressed by Goal 2 of the LAP, which highlights the need to incorporate technology to provide access in courtroom proceedings through the provision of remote interpreting and the establishment of recommended minimum technology specifications to facilitate its use.

About VRI

To achieve the goal of universal provision of interpreters in judicial proceedings, the LAP notes that appropriate use of technology must be considered. From the use of various forms of remote interpreting (telephonic or video) to the development of multilingual audiovisual material, technology will, by necessity, be part of any comprehensive solution to the problem of lack of language access in judicial proceedings.

The use of remote interpreters in courtroom proceedings can be particularly effective in expanding language access. To increase LEP court user access to qualified interpreters, the LAP allows for the proper use of video remote interpreting (VRI) in the courts:

Recommendation 12. The use of in-person, certified and registered court interpreters is preferred for court proceedings, but courts may consider the use of remote interpreting where it is appropriate for a particular event. Remote interpreting may only be used if it will allow LEP court users to fully and meaningfully participate in the proceedings.

The LAP also notes that the quality of interpretation is of paramount importance and should never be compromised. In response to the COVID-19 pandemic in 2020, many California courts implemented remote video solutions to ensure access to justice and protect the health and safety of court staff, court users, and judicial officers.¹ Today, courts have access to a wide variety of technology solutions that enable remote access to court proceedings, including offsite location of the interpreter, LEP party, jail staff, judge, and attorney. In both physical and virtual courtrooms, the quality of the interpretation continues to be of paramount importance and should never be compromised. If the effectiveness of the communication is in no way compromised and certain controls are in place, remote interpreting provides an important and viable way in which to provide LEP court users with immediate access to a qualified interpreter. As described in this document, remote interpreting allows LEP court users to fully and meaningfully participate in court proceedings when the court meets appropriate minimum specifications and provides training and resources for court staff and court users.

Among the benefits of remote interpreting is the facilitation of the prompt availability of language access for litigants by providing certified and registered interpreter services with less wait time and fewer postponements, saving court users and the courts valuable time. In addition, having qualified interpreters more readily available through remote interpreting can decrease the use of less qualified interpreters, dismissals for failure to meet court deadlines, and the frequency of attorneys or parties waiving interpreter services or proceeding as if the LEP person is not present, to avoid delays. By decreasing interpreter travel among 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.

Remote access is not limited to providing interpreter services. It is a means to provide a variety of services in locations that are not near a courthouse or not easily accessible. For example, where satellite courts have been closed or where jails are located some distance from courthouses, remote technology has allowed courts to provide access and service to those locations. It is imperative that courts, and the branch as a whole, include remote access technology solutions in language access planning efforts.

Any introduction of remote interpreting in the courtroom will have to include appropriate training and education—in advance—for all personnel who will be involved in the court proceedings. The Judicial Council’s Language Access Services is working with the National Center for State Courts to develop VRI training modules and materials for courts, interpreters, and LEP court users to support VRI and these guidelines. Training and materials will be

¹ In May 2020, the Judicial Council’s Language Access Services developed a handout, *You and Your Court Interpreter: Staying Safe During COVID-19*, to offer suggestions to ensure the safety of interpreters and LEP court users during the pandemic. It is available in English and other languages at www.courts.ca.gov/42863.htm.

developed with experts, including court interpreters. In conjunction with trainings, material presenting best practices for VRI events will also be developed, shared, and periodically updated.

Judicial officers, interpreter coordinators, and other court staff will need to know how to use the available technology, including how to launch the programs and how to use the technology during remote court proceedings. Judicial officers in particular will have to understand the logistics of the remote interpretation process to ensure that they are managing the courtroom and the proceedings appropriately. Suggested language for the judicial officer when considering objections related to remote interpreting is provided in these guidelines. Similarly, interpreters will need training on the use of the technologies and platforms used by the court, and on ways to ensure that audio is clear, to adequately provide accurate and effective interpretation. As appropriate, attorneys, bailiffs, sheriffs, and jail staff must also receive training and instructional material on the use of adopted platforms and technologies. Likewise, court staff must be trained and available to troubleshoot and address any technical problems with the equipment as the need arises.

LEP court users should also be informed of how to use the court's technologies and platforms (e.g., via translated instructions and recorded online orientations). The LEP court user should be advised of the options for participation (e.g., telephone, Wi-Fi) and the minimum technological specifications required to support those options. The court should make alternative solutions available (e.g., telephonic interpretation or workstations at the court) if the LEP court user does not have access to the minimum technology necessary for effective virtual participation as described in this document.

Any plan to create a statewide system of remote hearings that use VRI and other technologies must be conscious of the digital divide. *Digital divide* refers to the entrenched socioeconomic, geographic, and language-based gap that, until resolved, will make participation in court proceedings convened digitally difficult or impossible for many Californians. Although the digital divide should not dissuade courts from increasing the use of remote technologies, it is essential to be aware that access to technology is generally less available to people who face other obstacles. Courts must be willing to work with LEP Californians and other vulnerable litigants to allow them to participate.

About These Guidelines

These are suggested guidelines for remote interpreting for spoken language based on current best practices and, as such, should be subject to updating and revision by the Judicial Council to accommodate advances in technology that will support the delivery of interpreter services and help ensure quality communication with LEP court users. The guidelines do not attempt to represent rules or standards, but rather provide general guidance, including key considerations and recommended minimum technology specifications for VRI for spoken language events. The

specifications are designed to allow flexibility for courts, support physical and virtual courtrooms, and allow for future advances in technology.

Considerations and Guidelines for VRI in Court Proceedings

When using VRI, meeting minimum technology specifications and providing training are critical. Before selecting VRI for a particular courtroom event, the court should adhere to additional considerations and guidelines as described below.

Key Considerations

1. Minimum Technology Specifications for Remote Interpreting

When using VRI in any proceeding, the court should ensure that it has the equipment and technology to provide high-quality communications, regardless of the physical location of the participants. (See Appendix A for minimum technology specifications.)

2. Training

Before conducting VRI proceedings, the court should provide all persons participating in the VRI event with adequate training and orientation in the use of the equipment, interactions, and interpreting protocols.

Considerations for VRI for a Court Event

The initial analysis for determining whether a court proceeding is appropriate for VRI may be made by the interpreter coordinator, judicial officer, and/or court staff. The interpreter coordinator, judicial officer, and/or court staff should consider all of the following points when using VRI:

- The anticipated length and complexity of the event, including complexity of the communications involved
- The relative convenience or inconvenience to the court user
- Whether the matter is uncontested
- Whether the proceeding is of an immediate nature, such as arraignments for in-custody defendants, bail reductions, and temporary restraining orders
- Whether the LEP or other parties are present in the courtroom or appearing remotely
- The number of court users who are scheduled to receive interpretation from the same interpreter during the event
- The efficient deployment of court resources
- Whether the LEP party requires a relay interpreter—e.g., where there is an interpreter for an indigenous language who relays the interpretation in Spanish to another interpreter who then provides the interpretation in English (the need for a relay interpreter does not

preclude the use of VRI but might necessitate the presence of at least one of the interpreters in the courtroom or a combination of remote technologies)

- Whether the LEP parties require different interpreters

Guidelines for Using VRI in a Court Proceeding

1. Need to Interrupt or Clarify

When using VRI, the court should consult with the interpreter to determine how best to facilitate interruptions or clarifications that may be needed. The court should suspend and reschedule a matter if VRI is not facilitating effective communication because of technology issues or for other reasons.

2. VRI Time Management

The court should be mindful that, with remote interpreting, additional lag time may be needed for interpreting and relay interpreting. In addition, remote interpreting may result in increased fatigue and stress. Events involving remote interpreting should have shorter sessions or more frequent breaks.

3. Participants Who Must Have Access

The remote interpreter's voice must be heard clearly throughout the courtroom or in a remote courtroom session, and the interpreter must be able to hear all participants, whether they are in person or appearing remotely.

4. Visual/Auditory Issues, Confidentiality, and Modes of Interpreting

VRI is generally preferred over telephonic interpreting, which does not provide visual cues. Several remote platforms provide options for confidential conversations with the LEP litigant, attorney, and interpreter. Remote technologies may provide sight translation, consecutive interpretation, and simultaneous interpretation options.²

5. Documents and Other Information

The court should ensure the availability of technology to communicate written information—including a copy of exhibits being introduced—to the interpreter, as well as information after

² Court interpreters must possess proficiency in the three modes of interpretation: 1) simultaneous interpreting, 2) consecutive interpreting, and 3) sight translation of documents.

1. **Simultaneous interpretation** is when the interpretation from the source language to the target language happens in real time.

2. **Consecutive interpretation** is when the speaker pauses after one or two sentences and allows the interpreter to interpret from the source language to the target language before the speaker continues on with their speech.

3. **Sight translation** is when the interpreter is called upon to verbally translate legal documents from English to the target language and from the target language to English.

a proceeding—such as an order—so the interpreter can provide sight translation to the LEP individual, if needed.

6. Professional Standards and Ethics

The same rules for using qualified interpreters apply to assignments using VRI. The Language Access Plan intends to expand the availability of certified and registered interpreters through the use of VRI. All interpreters performing VRI should be familiar with—and are bound by—the same professional standards and ethics as onsite court interpreters.³

7. Data Collection

- a. Courts using VRI in the courtroom, or in a remote courtroom session, should monitor the effectiveness of their technology and equipment. This examination may include periodic surveys and/or a method for feedback and complaints by in-person and remote participants.
- b. For purposes of supporting funding requests, courts should collect data regarding VRI (e.g., the number of interpreter sessions provided, number of languages, and quality of VRI solutions) on an ongoing basis.
- c. The Court Interpreter Data Collection System (CIDCS) allows courts to track VRI as the method of interpretation. The data collected in CIDCS is used to support budget change proposals, including augmentation requests for the Court Interpreter Program (Trial Court Trust Fund 0150037) and other language access projects, including funding for VRI software and equipment.

Suggested Language for the Judicial Officer When Considering Objections Related to Remote Interpreting

Below is suggested language for the judicial officer when considering objections related to remote interpreting, including how to present information in the minutes.

We will have a court certified/registered *[insert language]* interpreter help us with these proceedings.

The interpreter is at a remote location and will appear in court via **[video/audio]** conference. Please remember to speak slowly and clearly and not to speak at the same time as each other.

³ See *Professional Standards and Ethics for California Court Interpreters* (May 2013). The requirements for provisionally qualifying an interpreter are stated in Government Code section 68561(c) and California Rules of Court, rule 2.893.

Do parties and counsel have any objections to the interpreter participating by remote interpreting for today's proceedings?

[Judge rules on objections, if any, or assists in resolving concerns.]

If proceeding with remote interpreting by video or audio:

Parties and counsel had no objections to the use of remote interpreting, so the court will proceed with today's hearing.

[or]

Parties and counsel objected to the use of remote interpreting, but the court has overruled those objections, so the court will proceed with today's hearing.

If not proceeding with remote interpreting by video or audio:

Parties and counsel objected to the use of remote interpreting. The court will not continue with today's hearing at this time and will reset this matter for a qualified *[insert language]* language interpreter to be available in person.

Suggested language to include in the minutes:

Interpreter *[insert interpreter name]* is present by **[video/audio]** remote conferencing and sworn to interpret *[insert language]* language for *[insert party name]*. [(If appropriate) Sworn oath is on file with the Superior Court of California, County of *[insert county]*.]

Add the final sentence about the sworn oath, without brackets, only if an oath is on file.

Visual/Auditory Issues, Confidentiality, and Modes of Interpreting When Working Remotely

1. A clear view of the LEP court user is more important than a view of every speaker. Although the default setting for various platforms displays the speaker, the courts may pin various courtroom participants to remain in view. Cameras on all stakeholders may be beneficial but are not essential. A speakerphone is not recommended unless it accommodates the other requirements of these guidelines, including the ability to be part of a solution to allow for simultaneous interpreting when needed.

2. To ensure the opportunity for confidential attorney-client conferencing, an attorney should have the ability to speak confidentially with an LEP client with the assistance of an interpreter before, during, and after the hearing. Such confidential conversations could be possible using a combination of personal communication devices such as smartphones, tablets, headphones, and individual handsets, depending on the physical location of each participant. Technology used to support virtual courtroom sessions must include some sort of breakout room or conference call functionality to provide for private conversations.
3. Interpreting in the courtroom regularly involves both simultaneous and consecutive modes of interpreting, which can be achieved in a variety of ways using existing and emerging technologies. In longer matters, failure to have a technical solution that can accommodate simultaneous interpreting will result in delays of court time and may cause frustration with remote interpreting. Courts should use a technical solution that will allow for simultaneous interpreting. However, there may be proceedings (for example, very short matters via a telephone) or connectivity issues in which consecutive interpreting is adequate to ensure language access. When using consecutive interpreting, the court should advise participants to speak clearly and in short sentences to help facilitate accurate interpretation.
4. Recognizing that courts may implement very different technical solutions for VRI, it is critical that before the start of an interpreted event all parties, judicial officers, court staff, jail staff, and officers of the court (including attorneys and interpreters) know how to allow for confidential conferencing when needed—for example, how to launch a virtual breakout room, add participants, and rejoin the hearing.
5. All participants, including the LEP party and the interpreters, need to check microphone and/or camera clarity before beginning interpretation. In addition, all participants, including the LEP court users and interpreters, should also check their phone or internet connectivity to ensure adequate signal.
6. Both VRI interpreters and courts should receive training and be knowledgeable of general steps to address technical issues. If available, the courts should also have technical support readily available as needed.
7. Clear, concise operating instructions should be available to interpreters, courtroom staff, jail staff, and LEP court users regarding any technical specifications or procedures related to remote interpretation.
8. When participating in remote events, all participants are encouraged to use a headset or earbuds with a built-in microphone, if possible. This equipment will improve audio clarity for both simultaneous and consecutive interpretation.

Note: Other visual considerations, including visual confidentiality, are important when using VRI with American Sign Language (ASL). Please see www.courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf for a complete discussion of using VRI with ASL-interpreted events.

Appendix A. Minimum Specifications for Remote Interpreting

The tables below offer guidelines for providing remote interpretation to LEP court users in court sessions that are initiated in:

- A physical courtroom with in-person and remote participation (table 1); or
- A virtual courtroom session, where all participants are remote (table 2).

Solutions need to support both consecutive interpretation (in open court when the speaker pauses after one or two sentences and allows the interpreter to interpret from the source language to the target language before the speaker continues on with their speech) and simultaneous interpretation (when the interpretation from the source language to the target language happens in real time), allowing the interpreter to toggle back and forth between consecutive and simultaneous interpretation modes as necessary. Solutions also need the capability for breakout rooms that allow confidential conversations between the LEP, attorney, and court interpreter before, during, and after the hearing.

Court users will receive instructions from the court on how to participate in remote hearings if they are appearing remotely. They may participate by using their smartphone or computer if the device has a microphone, an internal or external video camera, access to the internet, and Wi-Fi that supports reliable connectivity for sound and video images.

Remote video connections can be provided from a location within the courthouse for the LEP or an interpreter or both (e.g., from workstations at the courthouse that allow the LEP or interpreter to participate remotely via video). Courts will need to ensure that remote video equipment used at court (for listening, speaking, or visual purposes) is routinely cleaned between use to ensure safety among court staff and court users. If the LEP can connect using audio only (i.e., a phone without smartphone functionality and no video), then the court will provide a telephone number to the LEP for participation.

Courts will need to ensure that platforms used for remote hearings guarantee data security for the court. Also, VRI solutions used by courts must meet the system requirements for selected solutions and the *California Trial Court Facilities Standards*.

Court information technology personnel are highly encouraged to contact their assigned Judicial Council LAN/WAN design engineer for technical advice on network equipment and internet circuits. If court personnel are unsure who their design engineer is, they can email LANWAN@jud.ca.gov, and the appropriate team member will respond.

Table 1. Physical Courtroom With In-Person and Remote Participants

Scenario	LEP Connection	Interpreter Connection	Audio
Interpreter and LEP Remote	Remote video*	Remote video*	Internal (courtroom microphones) and external (remote session) audio connected to the courtroom public address system so all participants can be heard. [†]
Interpreter In Person, LEP Remote	Remote video*	Tablet device and headset to join the remote video session from within the courtroom	
LEP In Person, Interpreter Remote	Tablet device and headset to join the remote video session from within the courtroom	Remote video*	

Table 2. Virtual Courtroom With All Remote Participants

Scenario	LEP Connection	Interpreter Connection	Audio
Interpreter and LEP Remote	Remote video*	Remote video*	Provided via remote video solution [†]

LEP = limited English proficient.

* If the LEP can connect only via telephone (no video), then a telephone number will be provided to the LEP by the court for participation. A remote video connection could be provided from a location within the courthouse for both LEP and/or an Interpreter.

† When participating in remote events, all participants are encouraged to use a headset or earbuds with a built-in microphone, if possible. This equipment will improve audio clarity for both simultaneous and consecutive interpretation.

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1.	Naomi Adelson, Federal and State-certified Court Interpreter	N	<p>I had the honor to serve on the Language Access Plan Implementation Task Force (LAPITF), which conducted a Video Remote Interpretation (VRI) Pilot Project, evaluation, and then issued guidelines. At the final LAPITF meeting, the Task Force voted to approve the guidelines. At that time- as one of only three spoken-language Interpreters on the Task Force- I voted against the guidelines. I believed then, and now more than ever, that VRI requires stronger and mandatory minimum standards in order to assure meaningful language access for LEP court users.</p> <p>Understandably during the pandemic, courts have had to provide access and use whatever temporary means are available. These ad-hoc measures should never be implemented as permanent solutions, however. They have not been studied or evaluated. Stakeholders are not informed and cannot fully participate in this decision as California is still under purple-tier Corona virus restrictions. This revision is a further weakening of the Guidelines for VRI and should not be approved.</p> <p>The Judicial Council’s revised Guidelines for VRI for spoken languages argue that with remote interpretation, the “effectiveness of communication is in no way compromised... if certain controls are in place.” They continue, stating that remote interpretation is an “important and viable” way to provide LEP court users with a qualified interpreter. They also note that remote interpreting provides “meaningful” and “full participation when it meets minimum specifications.”</p> <p>If remote interpretation requires “minimum specifications” and “certain controls,” to provide LEP court users with meaningful</p>	<p>The committee thanks the commenter for their comment. The guidelines for VRI do not attempt to represent rules or standards but are intended to provide general guidance courts should follow including key considerations and recommended minimum technology specifications for VRI for spoken language events. The specifications are designed to allow flexibility for courts and to allow for future advances in technology, including advances in sound/audio and video quality, and capability to provide private video conferencing. The committee recognizes there will be a need for training and best practices to support the recommended guidelines and to ensure the successful use of VRI.</p>

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			<p>language access, why is the Judicial Council merely issuing advisory guidelines? What accountability do the courts have to ensure that meaningful language access is provided through Video Remote Interpretation? How will the courts evaluate the actual provision of services through remote interpretation? Why did they remove ALL technical specifications for remote interpretation from the previous guidelines?</p> <p>The revised guidelines further state that for communication to be effective, training and resources must be provided to court staff for implementation. If the training and resources are also a mere suggestion to the courts, how will they be provided? If they are not provided, who will be accountable for that? How will the public know?</p> <p>The new guidelines make many positive statements about remote interpretation that have not been proven and the guidelines do not provide citations as they are not factual statements. For example, how and why does remote interpretation decrease the use of less-qualified interpreters? In my experience doing remote interpretation during the pandemic, judges are not asking Interpreters for their qualifications online. In fact, they do it even less than they did in person. The guidelines also say that remote interpreting “reduces dismissals for not meeting deadlines.” This has not been proven and would require detailed research using statewide court statistics. They also state as fact that remote interpreting decreases the frequency of the waiver of appearances of LEP court users. There is nothing that can be further from the truth. In the over nine months that I have worked in remote interpretation for the courts, more waivers have occurred than I have seen in more than a decade. Finally,</p>	

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			<p>the guidelines argue that remote interpretation allows more litigants to be served by increasing and enhancing “language access.” This is preposterous as LEP court users have been shown to have less access to Internet services, mobile devices, and computers and thus, many do not have the ability to access remote services or even understand how to access them. Additionally, many courts have been charging fees to access the courts remotely. Increasing remote interpretation will only hurt access to justice for LEP court users.</p> <p>The revised guidelines argue that due to the emergency implementation of remote interpretation during the pandemic, courts today have “wide access” to technologies for remote interpretation. While the guidelines argue for minimum specifications, they do not state what those are and eliminated the previous more specific standards and specifications. Many courts are using platforms created for meetings (e.g. Zoom, BlueJeans) that do not meet the original minimum specifications for connectivity, wiring, etc. As a result, in my experience, on a daily basis someone’s Internet fails or sound is faulty. It can be the judge who has to log off and back in, the sheriff with the defendant remote from the jail, the court reporter trying to create a record or the Interpreter attempting to provide meaningful language access to a defendant or witness. Voices are often slowed and people seem to interrupt one another. Zoom has been proven to accentuate the loudest voice, which can be highly discriminatory in a courtroom setting. How will these guidelines change this in any way?</p> <p>The guidelines argue that several platforms have options for privacy, yet many do not. If there are not rules surrounding</p>	

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			<p>remote interpretation, how will privacy be guaranteed? While doing remote interpretation, I have heard outraged public defenders as they are not being allowed to go into breakout rooms with their clients. The guidelines' remedy is to suggest the use of personal communication devices for privacy. It is the courts' responsibility to guarantee equal access to justice for LEP court users, not the public, or the Interpreters. Additionally, the guidelines advise judges to tell people to speak clearly and in short sentences if using remote interpretation. Again, this is NOT what equal access to justice for LEP court users looks like.</p> <p>The revised guidelines also state unequivocally that the remote interpreter's voice must be heard. In my experience, LEP court users are instructed to hang up from the video connection and call a conference telephone line to hear the simultaneous interpretation. The voice of the remote Interpreter is NEVER heard during these simultaneous interpretations and is only heard when they unmute to consecutively interpret an LEP's answer. No one ever hears the interpretation besides the LEP. No one ever asks the interpreter to inquire if the LEP understood or heard. If the interpreter is to be heard, only consecutive interpretation can be used in remote interpreting. Additionally, the guidelines insist that the Interpreter be able to hear. Yet an Interpreter cannot know what they did not hear. I have found that with remote interpretation, Interpreters have become more invisible and no one remembers that the Interpreter is interpreting.</p> <p>At present, the courts are operating in full violation of these very weakened, proposed guidelines. How can the issuance of new, watered-down guidelines guarantee an improvement in remote</p>	

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			<p>interpretation practices? Why did the Judicial Council create these new recommendations without prior input from the public and interpreters? Relying on the good will of the courts through the issuance of recommendations will not guarantee due process and meaningful language access to LEP court users.</p> <p>Again, I respectfully request that you reject the revision of the guidelines.</p>	
2.	American Alliance of Professional Translators and Interpreters (AAPTI) by Angie Birchfield, Vice President and Legislative Chair ABinterpreting California Court Certified Spanish Interpreter	NI	<p>Due to the COVID pandemic, the legal profession has had to adapt to a new way of continuing business as usual and as such our profession has had to adapt to Video Remote Interpreting (VRI). As a result, we are able to continue to conduct legal proceedings both in and out of the courts.</p> <p>Having participated in the VRI Pilot Project in the Ventura Court and having participated in the Language Access Implementation Task Force, I know how seriously this option for interpretation is being taken by the Judicial Council.</p> <p>VRI has been challenging for some colleagues to become accustomed to. In the beginning the technology was new and colleagues were not exposed to it very much so they lacked the skills and knowledge on how to proceed virtually. After a year in this “new setting” the transition has become easier although it is not perfect.</p> <p>We acknowledge how much “safer” VRI is but the question remains, what will VRI look like in the long term? As was the plan from the beginning, VRI is looked at as a way to expedite certain cases where an “in person” interpreter is not easily accessible for the LEP’s language pair; for use in the outer lying</p>	The committee thanks the commenter for their comment. The committee also recognizes that Ventura Superior Court has been a leader with court technology including efforts to learn more about VRI and how to support successful VRI events.

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			<p>remote court locations and for short non evidentiary matters.</p> <p>We as interpreters also envision VRI as a safety net for an interpreter's court appearance when called upon as an expert involving a very high-profile case or as an interpreter in a high-profile case.</p> <p>Having experienced VRI first hand on a daily basis for a year, these are our observations:</p> <p>Scenarios when interpreting via VRI</p> <p>The interpreter is on zoom while the LEP is "in person" in the courtroom. The courtroom needs to either have:</p> <ul style="list-style-type: none">• A tablet or laptop with an activated camera on the podium or tables with headphones so that the LEP can communicate with the interpreter or:• The courtroom needs a panoramic camera that faces the audience so the interpreter can see the LEP. The LEP is using the phone bridge feature to communicate with the interpreter and so that the interpreter can use the simultaneous mode. The court has been requesting that the LEP use their personal phone to call the court so that the court can connect the LEP to the interpreter. This is problematic because one, the LEP's connection may be bad and two the LEP doesn't have a phone. The solution is for the court to have a phone connected in the courtroom so that the interpreter will call in and the proceeding can proceed from there.• A "VRI" cart can be utilized where the equipment can	<p>The suggested equipment for the interpreter or courtroom will be incorporated into education and best practice materials.</p>

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			<p>be transported from one courtroom to the next for those LEP's that appear in person.</p> <p>The interpreter and the LEP are on zoom:</p> <ul style="list-style-type: none">• The LEP needs to be taught ahead of time on the usage of the VRI program (Zoom, etc...). The need for educating the public is first and foremost.• The Judge does not want to use the simultaneous feature because it is too cumbersome to explain to the users about "muting the language" in order to listen in English.• When using the consecutive mode, the attorneys and judge forget that the interpreter is there.• The delay can sometimes be substantial enough to make it impossible to hear the first few words from the speaker.• The loss of the visual cues as well as subtleties used by the speakers causes an increase for a margin for error in the interpretation.• Interpreters have had to provide their own equipment (laptop, tablets, headphones, internet, etc.)• Interpreters have complained of headaches from staring at the computer screen for long periods of time and some hearing loss or tinnitus from the headphones and	

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			<p>back and neck pain from sitting in front of the computer for long periods of time.</p> <ul style="list-style-type: none">• The interpreter has to multi task (using the toggle on the screen, notetaking, etc.) while interpreting.• Team interpreting continues to be a very important aspect to this temporary issue and needs to be incorporated.• Encryption confidentiality is a concern as well. <p>Positive Aspects of VRI</p> <ul style="list-style-type: none">• After having participated in the VRI Pilot Project, I can wholeheartedly say that Zoom did a MUCH better job than the equipment provided by the vendors.• VRI has allowed us to continue to provide language access throughout the pandemic in a safe zone.• VRI has provided easier faster access for Language pairs that are not readily available.• VRI would provide a safe environment for an interpreter that has to testify as an expert in a high-profile case.• VRI would provide a safe environment for an interpreter interpreting in a high-profile case. <p>Regarding the specific questions:</p>	

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			<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes, with the above mentioned taken into consideration.</p> <p>Would the proposal provide cost savings?</p> <p>No because there are many court buildings that are old that don't have the capability to have a good bandwidth for a clear connection so many courthouses would need to be updated.</p> <p>Regarding the independent contractor interpreter, the standard fee of \$156.56/282.23 in the courts has been in place since 2004 and needs to be equivalent to the fees that their counterparts charge in the Private Sector which is significantly higher (please refer to the federal interpreter fee schedule (https://www.uscourts.gov/services-forms/federal-court-interpreters) as an example for the following reasons:</p> <p>-The interpreters must have a home studio;</p> <p>-Provide their own equipment which includes;</p> <ul style="list-style-type: none">• Headphones• Laptop's (for more than one courtroom)• More sophisticated internet• Landline for the phone bridge matters <p>-The amount of time that the interpreter is in front of the computer screen, sitting down, etc. and other issues that arise including the margin for error and the stress involved in making sure that the event is a smooth one.</p>	<p>The committee appreciates the feedback, but interpreter pay rate is outside the scope of the guidelines.</p>

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			<p>What would the implementation requirements be for the courts</p> <p>As it pertains to interpreters, it is an ongoing learning curve but an 8- hour training split into 4 two-hour training sessions to assure the interpreter understands its use and trouble shooting options so that they feel comfortable. A lead technological interpreter dedicated to trouble shooting and assisting colleagues would also be helpful to have.</p> <p>A self-study workshop option for the interpreters to trouble shoot as well as “court etiquette” training.</p> <p>There should be a private breakout room available for the interpreter to sight translate waiver forms, etc. with the LEP as well as an electronic signature feature.</p> <p>Once the pandemic is under control, the courts should establish VRI centers where the interpreter travels to and conducts interpretation from.</p> <p>How well would this proposal work in courts of different sizes?</p> <p>The technology is the same no matter the size of the court.</p> <p>Conclusion</p> <p>While VRI is part of the staff interpreter’s employment duties in counties not including Ventura and Sonoma, Independent Contractors would like to emphasize their interest in serving as the “secondary” option for available interpreters that are</p>	

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			<p>California based.</p> <p>The Technological Committee should have an employee interpreter and an independent contractor interpreter as part of it given that we are the stakeholders and we can share “hands on” experience.</p> <p>We would like to emphasize that “in person” interpretation should remain the number one priority. It is the most efficient way to communicate with the LEP and the courts.</p>	<p>The committee also recognizes that in-person interpreting is preferred, but that remote interpreting also provides an important service and safety mechanism to provide LEP court users with access to a qualified interpreter.</p>
3.	Mary Lou Aranguren, Certified Interpreter & Camille Taiara, Certified Interpreter	N	<p>Interpreters statewide have made their best efforts to adapt our work to Internet platforms designed for video meetings, as the courts navigate these incredibly challenging times. Remote appearances generally, as well as remote interpreting, have been absolutely necessary to maintain essential services while protecting the health and safety of all participants and the public during this emergency public health crisis, and under emergency orders by the Governor and Judicial Council.</p> <p>The following comments are based on our direct experience interpreting remotely during the COVID-19 pandemic, as well as input from more than two-dozen staff interpreters in the San Francisco Bay Area and Los Angeles, and review of relevant research and current discussions of remote interpreting platforms.</p> <p>We respectfully refute the flawed premise offered to justify the proposed VRI guidelines which states: “Due to the COVID-19 pandemic, courts have successfully used VRI to provide remote</p>	<p>The committee thanks the commenter for their comment. The guidelines for VRI do not attempt to represent rules or standards but are intended to provide general guidance courts should follow including key considerations and recommended minimum technology specifications for VRI for spoken language events. The specifications are designed to allow flexibility for courts and to allow for future advances in technology, including advances in sound/audio and video quality, and capability to provide private video conferencing. The committee recognizes there will be a need for training and best practices to support the recommended guidelines and to ensure the successful use of VRI.</p>

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			<p>interpreter services for hearings. The revised VRI guidelines will help to build on and standardize these efforts including establishment of a statewide VRI program.”</p> <p>Interpreters have been using a variety of platforms (Zoom, BlueJeans, WebEx) to interpret from courtrooms or remotely from a laptop in a wide range of proceeding types and scenarios where some or all parties appear remotely. Our experience interpreting over these platforms has been extremely difficult, and the experimental efforts we have all participated in would best be described as marginally effective and a far cry from successful.</p> <p>Our experience is that the improvised technology “solutions” present serious challenges and impede the ability of limited-English proficient (LEP) parties to participate in their own cases.</p> <p>The proposed “anything goes” approach will not “build on and standardize,” or enhance, efforts to provide language access remotely. Suggesting that the ad-hoc technical configurations being used during this health crisis provide a model for VRI use is misguided and irresponsible. The proposed guidelines would perpetuate the ongoing use of poor quality systems, without minimum technical standards, and without well-defined restrictions.</p> <p>The systems being used out of utter necessity during this health crisis have no place in a postpandemic courtroom, and can only be considered stop-gap emergency solutions. Moreover, information is emerging that working over Internet meeting platforms without necessary standards for audio quality is</p>	

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			<p>damaging to interpreters' hearing.</p> <p>Consistent technical standards and protocols must be developed and adopted as mandatory standards, rather than guidelines, to ensure accurate interpretation and protect access to justice. Impacts on due process, civil liberties and access to justice We have observed many problems with LEP participation and due process during the pandemic as a result of communication dynamics in remote appearances combined with the complexities of interpretation. These impacts are glossed over and often go unrecognized by participants, including judges, attorneys, parties and interpreters as we all struggle to get through this crisis.</p> <p>A significant body of research in Europe supports the validity of our experience and observations. The AVIDICUS Project [FN1] conducted studies over more than a decade investigating the challenges and risks involved in video-mediated interpretation in legal settings. Researchers point out that “potential challenges of combining the technological mediation through VC [video conferencing] and the lingua-cultural mediation through an interpreter are widely underestimated.” [FN2]</p> <p>AVIDICUS 2 compared face-to-face interpreting and remote interpreting and identified impacts on the communication dynamic. “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.” The study found that video conferencing exacerbates interaction problems, and “the rapport between the participants is weakened by the</p>	

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			<p>videoconference setting and the problems of hearing (and understanding) are aggravated.” [FN3]</p> <p>There are many other reasons for legal aid and defense attorneys and prosecutors to be concerned about the effects of remote appearances on their clients’ rights, and for judges to be cautious about the impacts of remote appearances and remote interpreting on constitutional rights. These include:</p> <ul style="list-style-type: none">• Remote interpreting restricts the scope of language access available to LEP parties before, during, and after a proceeding. This access is broader when interpreters and parties appear in person, and critical to support LEP court users (and their representatives) as LEP parties navigate the complexities of legal proceedings and orders. <p><i>1 The AVIDICUS project undertook studies over more than a decade to gain a better understanding of the difficulties arising in video-mediated interpreting in a legal context, including a review of current practice, surveys of judicial institutions/legal practitioners and legal interpreters, and empirical studies comparing traditional legal interpreting with the different forms of video-mediated interpreting.</i></p> <p><i>2 AVIDICUS 3: Handbook of Bilingual Videoconferencing; http://www.videoconference-interpreting.net/wpcontent/uploads/2016/08/AVIDICUS3_Handbook_Bilingual_Videoconferencing.pdf.</i></p> <p><i>3 Avidicus 2 (2011-2013), Sabine Braun, University of Surrey, Page 45.</i></p> <ul style="list-style-type: none">• Confidential attorney-client consultations are much more limited and cumbersome, and more often than not simply do not occur due to these limitations.• Testimony through video has been found to be less credible (Harvard Law Review, 2009)• Worse outcomes have been documented for detained	

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			<p>immigrants when judges and defendants appear over video.</p> <p>Researchers studying these impacts point out that understanding the effects of remoteness on the dynamics of proceedings will require substantial further research and warn, “Until this is possible, the introduction of video-mediated interpreting should be slow and incremental, allowing for adjustment as more research outcomes become available.” [FN4]</p> <p>Impacts on accuracy and quality of interpretation</p> <p>Accuracy and quality of interpretation suffer in remote, video-mediated hearings. According to studies conducted using higher quality sound and video than is available over platforms and devices currently being used in California courts:</p> <p>All forms of video-mediated interpreting were found to magnify known problems of (legal) interpreting [...] the number of serious interpreting problems was generally higher [...] compared to face-to-face interpreting. Previous studies have highlighted that videomediated interpreting often magnifies known communication and interpreting problems. Remote participants, and in particular defendants, have reported difficulties in making themselves ‘heard’ by the court and in understanding the content of their own trials.” [FN5]</p> <p>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</p>	

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			<p>“that the interpreters worked very close to the limit of their mental capacities.” [FN6] It bears mentioning that these results were obtained using far better technology, and far simpler communication exchanges than what we’ve been attempting under ad-hoc COVID-19 conditions.</p> <p>To interpret completely and accurately, interpreters have to hear much better than other participants in a court proceeding and need visual clues and information that adds important context and aids in hearing and understanding. We have to be able hear over our own voices and we are more impacted by disruptions in audibility. The harder it is to hear, the more cognitive effort goes to trying to understand what we are hearing. Studies of simulated remote interpretation have shown that putting so much effort into hearing impacts accuracy. Our struggle to hear interferes with the other cognitive functions required for simultaneous interpretation: translation of the message into the target language, monitoring output in the target language to ensure accuracy, and listening to the next part of the message in the source language.</p> <p><i>4 Recommendations for the use of video-mediated interpreting in criminal proceedings, Page 271 Videoconference and Remote Interpreting in Criminal Proceedings, Sabine Braun, University of Surrey, July 2012.</i></p> <p><i>5 AVIDICUS3:</i> <i>http://epubs.surrey.ac.uk/303017/2/14_Braun_recommendations.pdf.</i></p> <p><i>6 Braun, Sabine. (2013) Keep your distance? Remote interpreting in legal proceedings: A critical assessment of a growing practice. Interpreting 15 (2), 200-228, Page 214.</i></p> <p>All of the issues described in sections that follow interfere with our ability to provide complete and accurate interpretation as well as our ability to monitor and assess our own performance</p>	

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			<p>and report impediments to our performance to the presiding judicial officer.</p> <p>Technology: Sound and Connection Issues</p> <p>Quality of sound and video is directly connected to quality and accuracy of interpretation. Standards for high-definition audio and video, dedicated wired systems, high quality microphones and cameras, and placement of interpreters and other speakers, are completely missing from the proposed guidelines, which should be described as guidelines for nonstandardized and unregulated use of VRI.</p> <p>Interpreters have experienced ongoing problems with audibility throughout the pandemic because sound quality over the platforms being used is poor and unreliable. Problems with sound include interference, echo, distortion, bad microphones, choppy audio and video, sound lags and variable volume of different participants, among others. Background noise, including noise from children and pets in homes and noise from detention facilities only adds to these challenges.</p> <p>These sound issues are due only in part to poor Internet connections and the fact that so many participants are connecting without standards or requirements as to the quality of the connection or equipment (devices, headsets, microphones). However, experts say that even with the best remote set-up, the sound is lost in the link transmitting the speaker's voice through the platform.</p> <p>Speaking in a hearing of the Canadian House of Commons</p>	

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			<p>Standing Committee of Official Languages, [FN7] on the challenges of interpreting over Zoom, Dr. Christoph Stoll, explained the fundamental problem is that sound quality is degraded by platforms- all platforms. "Original sound across spectrum is lost over Zoom. Speech intelligibility (.49) was among the lowest of all measured systems. Some are better than Zoom- all of them do not match the frequency range required to listen and speak at the same time (9-18 kHz)."</p> <p>The limitations of these platforms for simultaneous interpretation are based on inherent limitations in sound quality. Good microphones and headsets, a dedicated Ethernet connection, and fixed bandwidth can help. However, neither the basic nor the "advanced" versions of Zoom are ISO compliant. [FN8] They do not provide the quality of sound needed to listen and speak at the same time.</p> <p>Regular interpretation audio equipment (not remote) provides quality far superior to ISO standards, which are actually a minimum. Adequate set-ups to replace platforms and work remote can be achieved. They are expensive. They require the presence of a sound engineer, a "fixed bandwidth" on a "dedicated system" and the manual adjustment of settings.</p> <p><i>7 Dr. Stoll is conference interpreter (AIIC), trainer and researcher at Heidelberg University MA KD program. Committee hearing at 15:30 EST February 4, 2021. 8 ISO (International Organization for Standardization). ISO 20108:2017 Simultaneous interpreting- Quality and transmission of sound and image input –Requirements. Standards for the quality and transmission of sound and image input to interpreters and specifies the characteristics of the audio and video signals.</i></p>	

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			<p>Poor quality video, lack of visual information and inability to see speakers</p> <p>Interpreting is known to rely heavily on non-verbal clues including mimic, gesture, posture, and the interpreter's general visual perception. [FN9]</p> <p>Ad hoc use of meeting platforms does not provide the visual information interpreters rely on for hearing, understanding and processing meaning in fast-paced communications.</p> <p>Interpreters working remotely during the pandemic report that a lack of visual information creates major challenges including not being able to see a clear image of who is speaking, not having a view of the overall environment and locations of speakers, and the fact that only some speakers in a communication are visible (some participants are on the phone or disable their cameras). Many interpreters report the need for significant support for hearing and comprehension by watching lip movements, seeing the person who is speaking, and visually following the flow of communication in the communication space, whether that is a courtroom or a virtual courtroom on screen.</p> <p>Risks of Injury to Interpreters</p> <p>Interpreting in legal proceedings during the pandemic has been highly stressful for interpreters whether working in-person at serious risk of COVID exposure, or working remotely with inadequate equipment, poor sound, and a complete lack of training or protocols for remote interpretation.</p>	

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			<p>As one interpreter put it, “I have been feeling the effects of remote interpreting for some time, and this year I am taking more single vacation days than ever because it is difficult and physically overwhelming (auditory and cognitive-wise) to be on BlueJeans and the Bridge Line.”</p> <p>When sound quality is deficient, interpreters have to turn up the volume in order to perform their work. “You cannot currently get from any platform the quality [of sound] you need to listen and speak at the same time without damaging your hearing,” according to Heidelberg University researcher Dr. Christoph Stoll, who has designed interpretation sound systems for conference settings.</p> <p>Perhaps the biggest health risk remote interpreters are being subjected to is hearing loss and damage including tinnitus and acoustic shock syndrome [FN10] which are side effects of working remotely under current conditions.</p> <p>Hearing is a foundational requirement to work for spoken-language interpreters, and essential to our livelihood. Any cost-benefit analysis regarding the use of VRI as currently proposed must take into account the cost to interpreters’ health and hearing.</p> <p>Remote interpreting also increases fatigue and stress even using well-designed technical configurations with high definition video and audio. Poor sound quality adds another level of fatigue (which impacts accuracy) as does working in simultaneous mode on platforms that do not support listening and speaking at the same time.</p>	

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			<p><i>9 Recommendations for the use of video-mediated interpreting in criminal proceedings, Page 271 Videoconference and Remote Interpreting in Criminal Proceedings, Sabine Braun, University of Surrey, July 2012.</i></p> <p><i>10 Among the symptoms reported by those diagnosed with acoustic shock syndrome are headaches, tinnitus, ear pain, nausea, jaw and neck pain, fluttering noises in the ear, poor balance, hypersensitivity, and fatigue. Interpreters and call center representatives are among those listed as vulnerable to acoustic shock exposure.</i></p> <p>The phenomenon that has been coined “Zoom fatigue” [FN11] is familiar to interpreters because they experience it in face-to-face interpreting, however it is exacerbated when working remotely due to poor sound quality of the Internet meeting platforms and other factors discussed in these comments.</p> <p>Use of complicated setups that are not designed for interpretation, juggling multiple devices and logins, muting and unmuting to avoid interference between the platforms and devices, all under time pressure, is physically taxing and anything but ergonomic.</p> <p>Impediments to access and performance reported by Interpreters</p> <p>In addition to the significant technological challenges created by substandard video and audio quality discussed in detail above, interpreters report experiencing and observing many other impediments to access for LEP court users and the interpreters’ performance:</p> <ul style="list-style-type: none"> • Many LEP parties lack access to good connections or appropriate equipment • Lack of context due to time limitations in advance of and following a proceeding 	

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			<ul style="list-style-type: none">• Lack of information and instruction in advance of hearings to orient interpreters and LEP parties and provide context that is necessary to provide high quality interpretation• Use of inadequate equipment (microphones, cameras, devices) by remote participants• Lack of protocols to ensure parties and interpreters are connected• Disorientation of LEP parties and interpreters because we cannot tell who is speaking• Lack of protocols to control pace and turn taking during proceedings• Lack of protocols to identify speakers. LEP parties unable to know who is saying what, rendering the interpretation a stream of words in one voice without context that is necessary to comprehension: who is saying what?• Inability to interrupt as needed to request repetitions or to interpret LEP questions or comments; lack of protocols for interruptions• Interpreter and LEP party become “invisible” because platforms are not designed for interpreting.• Inattention by judges and lawyers to the need for pauses, and failure to look at LEP parties or notice when they are trying to speak. Racing ahead with proceedings without awareness of technical issues and interpretation challenges affecting LEP presence and interpreter performance <p>Based on our decades of experience as working interpreters in the court system, we are doubtful that courts will develop the</p>	

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			<p>serious training and protocols that would be necessary to address the issues and problems inherent in remote interpretation. These issues reflect bad habits and ingrained practices that are rooted in a total lack of recognition of the challenges of interpretation generally, and a lack of understanding of the limitations of remote appearances and remote interpretation specifically.</p> <p><i>11 Zoom fatigue has another name that audiologists and researchers use – “concentration fatigue.” Mario Svirsky, professor of hearing science at NYU Langone Health medical center explained, “It’s not necessarily persistent fatigue but surely a measurable increase in listening effort... A little noise in the background can bring you over a tipping point where communication becomes much more difficult and you have to do a lot of work. You may participate in a meeting focusing on everything for the full two hours and, at the end, you are wiped out.”</i></p> <p>Modes of Interpretation</p> <p>Platforms being used for remote appearances in virtual courtrooms, like Zoom, WebEx and BlueJeans, are not designed for interpretation. Most are one-channel systems- only one person can speak at a time- and only support consecutive interpretation. Even platforms with two channels do not provide the quality of sound required for remote simultaneous interpretation (RSI) as discussed above.</p> <p>Consecutive mode is better for maintaining accuracy in remote hearings. The slower and more controlled pace allows interpreters to make sure they hear and to interrupt and request repetitions, as necessary. Many short and sometimes long proceedings are conducted this way, but proceedings are slow and cumbersome. This mode does not work well for longer communications or hearings with many participants. It creates</p>	

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			<p>fragmentation that can make it difficult for interpreters to track meaning and for speakers to deliver their message. Additionally, the slow pace taxes the patience of participants, particularly judges, and this can impact the ability of participants to be heard or fully argue an issue. VRI in this mode is not efficient when you consider the cost of court time for all participants. Simultaneous interpretation is being improvised using one-channel systems by using a separate device, usually a telephone, to interpret simultaneously to the LEP court user. The efficacy of this setup has not been evaluated, however, and it presents a number of problems for interpreters and LEP parties:</p> <ul style="list-style-type: none">• Poor sound quality on the platform makes it difficult for the interpreter to hear the proceeding while speaking into the phone.• Sound quality for the LEP party through the phone is bad for hearing the interpreter.• It is difficult for the interpreter to be loud enough for the LEP party and still hear the proceeding on the platform.• The LEP party is hard to hear due to poor sound quality over the phone• Parties must mute themselves to avoid interference if they are viewing video.• LEP parties are isolated; they are not seen or heard by other participants in the hearing.• If parties speak during simultaneous interpretation, only the interpreter hears the party speak; the interpreter then misses some of what is said. The process to unmute the platform to inform the court that a party is speaking is cumbersome and disruptive. Managing different devices and muting and unmuting interferes with the focus needed to maintain accuracy and ensure complete	

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			<p>interpretation.</p> <ul style="list-style-type: none">• Often parties do not have two devices and forgo video of the hearing in order to hear interpretation.• Comprehension by interpreter and LEP parties without a visual connection is much more difficult because they cannot see who is speaking and follow the proceeding. <p>Some versions of Zoom and other platforms have a separate channel for simultaneous interpretation. By some reports this function has been unreliable and cumbersome to use, and some judges have refused to use it. Moreover, although the function theoretically allows for simultaneous interpretation, videoconference platforms do not provide the stability and audio and video quality required for accurate simultaneous interpretation, as previously discussed.</p> <p>Despite these problems, simultaneous interpretation is strongly preferred by judges because it is more expedient, and interpreters are pressured to use simultaneous mode. The isolation of LEP parties and impediments to participation are largely unrecognized by other participants in the proceeding.</p> <p>Current discussions by conference interpreters on the subject of remote simultaneous interpretation (RSI) using Internet platforms leave no doubt that the ad-hoc, improvised and poor quality systems being used as emergency measures in state courts at this time have no place in the regular delivery of language access in courtrooms and legal settings post pandemic.</p> <p>Proposed guidelines render what were weak minimums into non-standards</p>	

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			<p>The original guidelines adopted by the Language Access Task force, though still only guidelines, were more complete and provided at least some minimum standards, and more directly addressed some of the above issues.</p> <p>The proposed guidelines removed the few basic minimum technical standards from the original guidelines in favor of an “anything goes” approach. Based on the experiences and information being reported by working interpreters using ad-hoc systems under emergency orders during the pandemic, it is clear that these systems have proven totally inadequate.</p> <p>Courts will need clear, strict and mandatory standards to establish best practices and protect language access for LEP parties. Vast improvements in technical set-ups, high-definition sound and video, cameras and screens for interpreters, and many other changes are needed if VRI is to be expanded responsibly and in a way that enhances language access.</p> <p>There are standards for sound quality in simultaneous interpretation. ISO standards are minimum requirements that have been established to interpret reliably and safely and have been agreed upon by equipment manufacturers, sound engineers, audiologists and worldwide organizations. Adequate setups to replace platforms and work remote can be achieved. They are expensive. They require "fixed bandwidth" on a "dedicated system" and the manual adjustment of settings by sound engineers.</p> <p>When considering a cost-benefit analysis. The statewide judicial</p>	

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			<p>system and legislators should consider the real costs of providing professional, accurate and meaningful interpretation remotely, including the very expensive technology and systems required for remote interpretation to be effective. Policy makers must also consider the value of these expenditures given the limited proceedings that can be conducted remotely, and the lesser quality of access, even assuming best case scenario: high quality sound and video, and well-thought-out training and protocols.</p> <p>Conclusion</p> <p>We hope this account of problems encountered by interpreters and LEP parties during the COVID-19 public health emergency will serve to debunk the notion that improvised remote interpreting “solutions” are successful, or would provide an acceptable level of access when this is over. We’re confident that many other stakeholders have had similar experiences.</p> <p>It is tempting to think that the ubiquitous presence of technology and wireless connections in everyday life means that obstacles to remote interpretation should be cheap and easy to overcome. But they are not. Researchers summarizing their work studying the very issues we encountered using today’s technology, said it best: “The chain of communication is only as strong as its weakest link. The chain includes the legal service interlocutors, the interpreters or translators and the technology. Failure by any one of them risks the integrity of the whole. If, for example, the interpreting is inaccurate, the IT equipment is inadequate or the legal services do not perform correctly, justice is jeopardised. There are times when we choose to buy or use a process which</p>	

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			<p>is simple because there is “less to go wrong”. This is not an option in this context. Communication alone is complex. Communication through an interpreter is more complex and communication through technology and interpreting more complex than that. Simple it isn’t. In addition there are a range of variables, which may or may not be possible to foresee or control. Therefore, every element that can be foreseen has to be carefully considered, prepared, organised and quality controlled for video-mediated interpreting to be effective and adequate.” [FN12]</p> <p><i>12 Videoconference and Remote Interpreting in Criminal Proceedings, Sabine Braun and Judith L. Taylor Editors, July 2012 (AVIDICUS- Conclusions and Implications, Ann Corsellis, OBE).</i></p>	
4.	California Access to Justice Commission by Hon. Mark Juhas	AM	<p>For the past 24 years, the California Access to Justice Commission has worked toward achieving equal access to justice for all Californians. The Access Commission endorsed measures to reduce language barriers to California’s courts in published reports in 2002, 2005, and 2015. (The reports are available at https://www.calatj.org/.)</p> <p>We appreciate the efforts of the Judicial Council of California’s Information Technology Advisory Committee’s (ITAC) to revise and adopt the Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language Interpreted Events.</p> <p>Increasing the availability of remote technologies can, when done right, increase access to justice, as we noted in our Remote Hearings and Access to Justice During COVID-19 and Beyond guide. There are, nonetheless, a number of critical access to justice and accessibility issues with relying on remote</p>	The committee thanks the commenter for their comment. Suggested changes to the guidelines have been made as noted below.

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			<p>technologies. The critical civil legal issues that low-income Californians, self-represented litigants, and other court-users face continue and, in many ways, are exacerbated in the midst of the pandemic. People facing unjust evictions, domestic violence, public benefits and unemployment insurance denials, and myriad other issues have needed the courts to assist them in reaching resolutions that can help them stay housed, reach safety from an abuser, and receive the benefits they need to get by.</p> <p>Consequently, we have seen how critical the remote hearing infrastructure is in this time of crisis, particularly for the population of Limited English Proficient (LEP) court users intending to use the courts to assert their rights. As the Judicial Council recognizes, these individuals need help to overcome the language barriers standing in the way of their meaningful participation in the court system. Accordingly, we support the goal of providing a guide that contains updated, standardized best practices and minimum specifications for courts to use in utilizing VRI as a tool to increase access for LEP court users. There are two main points we would like to emphasize as part of this process, namely, the “digital divide” and court safety.</p> <ol style="list-style-type: none">1. Take the “Digital Divide” into account for Limited English Proficiency (LEP) court users <p>It almost goes without saying that technology has the potential to expand access to justice by helping people “get to” the court without actually having to show up by using technologies like videoconferencing. This has been especially important when in-person appearances are unsafe due to a pandemic. Still, while technology has the potential to increase access to justice, we</p>	<p>The committee appreciates the suggestion and will revise the guidelines and include recognition of the digital divide in VRI statewide efforts.</p>

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			<p>must avoid perpetuating barriers that hold back low-income Californians and other disadvantaged groups when designing and implementing new tech-based systems.</p> <p>Any plan to create a statewide system of remote hearings that utilize VRI and other technologies must be conscious of the “digital divide.” The digital divide refers to the entrenched socioeconomic, geographic, and language-based gap that will, until resolved, make it difficult or impossible for many Californians to participate in court proceedings convened digitally. While the digital divide should not dissuade courts from increasing the use of remote technologies, it is essential to note that access to technology is generally less available to people who face other obstacles. Courts must be willing to work with LEP Californians and other vulnerable litigants to allow them to participate.</p> <p>Specifically, courts should ensure that resources, information, and other digitally oriented systems address the fact that LEP court users may not have the tools or technologies to access and comprehend them. The term “digital divide” does not appear in the Guidelines as proposed. Recognizing the intersection of language access and the digital divide is essential to ensuring the program is effective and successful in ensuring meaningful access, which is the goal of the Council.</p> <p>2. Support Increased Use of Remote for Safety Reasons During COVID-19</p> <p>Developing sustainable, high-quality remote systems will help prevent unnecessary in-person activities at courthouses that can</p>	<p>The committee agrees that VRI provides an important role to ensure safety of participants during the COVID-19 pandemic, and in other situations to ensure the physical safety of participants. A link to a safety handout for</p>

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			<p>spread the COVID-19 virus. This includes the in-court presence of interpreters and others who provide invaluable translating services to LEP court users. VRI offers a significant advancement by getting LEP court users what they need to participate while avoid unnecessary in-person hearings. Of course, after COVID-19 is over, to the degree it will be, it is important to continue to encourage in-person hearings when necessary (e.g., jury trials). Nonetheless, building an inclusive, quality VRI and remote hearing infrastructure is critical now and post-COVID 19.</p> <p>We thank you for your leadership on the issue of language access and ensuring equitable court participation for LEP court users.</p>	interpreters and LEPs in physical proximity has been included in the revised guidelines.
5.	California Federation of Interpreters, Local 39000 TNG-CWA (CFI) and the Interpreter Guild of America (IGA) by Michael Ferreira, President	N	<p>The California Federation of Interpreters Local 39000 TNG-CWA (CFI) and the Interpreter Guild of America (IGA) submits these written comments outlining our concern and opposition to the proposed Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language Interpreted Events.</p> <p>CFI and IGA represent approximately 1000 staff and freelance court interpreters who provide linguistic access to justice for Limited English Proficient (LEP) court users. The work our members perform daily across the state plays an instrumental role in ensuring due process for LEP court users and further allows all participants to communicate efficiently. The court interpreter's skillset is essential not only to the LEP individuals, but to English-speaking judges, lawyers, social workers, probation officers, security personnel, and the many other justice</p>	The committee thanks the commenter for their comment. Suggested changes to the guidelines have been made as noted below.

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			<p>partners who form the backbone of the court system.</p> <p>While we recognize the need to make adjustments to court protocols and practices during the COVID-19 public health emergency, we should not take the disjointed usage and the haphazard forms of remote interpreting presently used during the pandemic as the permanent VRI form into the future. Should this present VRI manifestation during the pandemic become the model when courts return to normal operations, it will certainly give rise to countless negative impacts on meaningful language access. Understanding the impediments to language access when using VRI is essential to overcome the challenges and put into practice its successful use. There is a real disconnect between the current proposed changes to the Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language Interpreted Events and the real-time frontline information conveyed by interpreters, bench officers, and justice partners.</p> <ol style="list-style-type: none">1. In-person interpreting services should continue to be preferred for court proceedings and VRI should only be used under strictly controlled uniformed conditions for limited and appropriate interpretation events in court proceedings; where there would otherwise be no language access available, and where no in-person interpreter can be provided. <p>We recognize that VRI has the benefit of expanding access to justice for LEP court users in areas where otherwise qualified in-person interpreters are not immediately available. However, the proposed recommendations to broaden adoption of VRI places</p>	<p>The committee also recognizes that in-person interpreting is preferred, but that remote interpreting also provides an important service and safety mechanism to provide LEP court users with access to a qualified interpreter.</p>

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			<p>LEP court users at a disadvantage. Absent from the proposed VRI recommendations is the ITAC committee's recognition that VRI is not appropriate for every and all proceedings, hearings, and other interpretation events. The Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language Interpreted Events should serve as a true guide with detailed information indicating when, where, and how VRI is appropriate. As proposed, the recommendations give scant guidance in this regard.</p> <p>2. VRI is not appropriate for all court proceedings, hearings, or trials.</p> <p>VRI is only to be used for low stakes hearings under unique and unusual circumstances, such as health concerns or travel distance, such that it causes a court user unfair hardship. Stating as a consideration for using VRI, "the relative convenience or inconvenience to the court user" hardly fits the previous notion "unfair hardship."</p> <p>Normally, it takes some fairly sophisticated equipment, platform software, and collaboration with all users speaking clearly at a measured paced for the interpretation event to be successful, maintaining the minimum level of precision and integrity to support the minimum requisites of due process. Therefore, regarding in-courtroom proceedings, hearings that are best supported by VRI are: arraignments, bail motions, continuances, trial settings, trial confirmations, status conferences, and other time-sensitive hearings that are neither complex, nor of an evidentiary nature. VRI should definitively be used to expand language access outside of courtroom proceedings. Indeed, there</p>	

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			<p>is a growing unmet need for VRI concerning attorney-client consults, as well as provide effective other one-on-one, low stakes communications, all of which are so very necessary for the processing and preparation of criminal and civil cases.</p> <p>3. VRI should only be used if court users, justice partners, and other litigants have access to the recommended equipment, platform software, and internet access that complies with technological requisites needed to render meaningful language access over VRI.</p> <p>The proposed recommendations have further diluted the already sparse technological requirements adopted and fails to recognize and recommend sorely needed technology improvements. The current VRI arrangements implemented in the different courts during the pandemic is nothing less than a miscellany of video-telephony software cobbled together with improvised VRI-like setups with which interpreters have continuously reported technical difficulties, poor audio quality, unstable connectivity, delayed connections, echoes and feedback, background noises, static, and low to freeze frame video quality. Indeed, in some jurisdictions with signed agreements for VRI stipends for staff interpreters, in an effort to sidestep the agreement, the courts have done everything in their power to use a remote system that does not fit the working definition of VRI, while all the time expecting to receive the same level of functionality and high communication quality levels required of bona fide VRI systems. The situation is basically a disjointed jumble of VRI platforms and protocols individually adopted by each court during the pandemic.</p>	

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			<p>The propose changes places indigent court users in a disadvantage. Self-represented LEP litigants with little to no English literacy are left to fend for themselves in a foreign court culture with no guidance, direction, nor instruction. Adding technology to the mix further alienates and exclude LEP court users who are indigent and technologically illiterate. The proposed changes fails to address the digital divide. Absent from the proposal is mention of remote satellite sites where indigent and the technologically inexperienced can connect remotely on court managed systems supported by onsite tech support.</p> <p>4. There should only be one standard VRI platform approved and implemented throughout all state courts.</p> <p>The lack of a uniformed platform and protocol recommendation lessens meaningful access to justice for LEP court users by placing the LEP in an unnecessary disadvantage, which in turn violates due process. As VRI is presently implemented throughout California's courts, the LEP court users struggle to navigate remote platforms and protocols for various reasons, including the following: too many different VRI platforms are used from court to court, at times several within an individual court; there are no instructions in the LEP's language to guide them on how to connect or use the platforms; and there is a technology gap because of income, education, and technology disparities that lead the LEP to opt for affordability commensurate with their income formal education level, leading to the acquiring equipment with low audio-visual quality and spotty connectivity.</p> <p>VRI has not proven to be the most effective language access</p>	<p>The committee will revise the guidelines and include recognition of the digital divide in VRI and other remote statewide efforts.</p> <p>The guidelines provide recommended minimum technology specifications and are designed to allow flexibility for courts and to allow for future advances in technology.</p>

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			<p>delivery system, and there have been numerous documented problems with its use, before and during the pandemic. The state courts should agree and implement the use of only one standard platform statewide. Having one platform: enables uniformed education and training on the correct use of VRI and its platform; ensures due process and meaningful access protections for the court user in general; provides one set of protocols for all state courts to follow; creates uniformity in the instructions and their translations; and, more easily expands the employee pool available to courts that do not have staff interpreters to cover brief routine non-complex and non-evidentiary matters. To continue down the road of multiple platforms – with the learning curves inherent mastering them – could cause unnecessary delay, and could place an in-custody defendant at risk of staying in jail longer than necessary, or place a court user seeking a restraining order or emergency custody order in harm’s way.</p> <p>Regarding using VRI in custody settings, all incarcerated defendants lack the most basic elements for meaningful language access. Incarcerated defendants depend on the custody facilities’ resources such as staff knowledge to navigate the various VRI platforms and environment control to ensure privacy and a quiet location. Bench officers, lawyers, court reporters, interpreters, and clerks often complain about jail/penitentiary staff cooperation and training regarding VRI equipment. Particularly salient issues are connecting and navigating a platform, poor audio/video quality, background noise, no privacy, static, feedback, and negligible effort from the jail/penitentiary staff to improve the connection. On most occasions, jailed inmates are placed in front of a laptop or tablet without even verifying if they are connected to the correct</p>	

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			<p>courthouse or courtroom. LEP inmates are logged onto the wrong site because jail staff are not equipped or unfamiliar with the correct platform used in that court. Defendants are commonly left alone with shackled hands unable to mute, unmute, or join a breakout room. Interpreters often complain about the loud background noises that make their already challenging jobs much more difficult; they express frustration about not being able to verify if the connection has been established because jail/penitentiary staff leave the LEP defendant who has practically no knowledge about how to use the technology or platforms to fend for themselves with shackled hands.</p> <p>Many technical difficulties are primarily due to low quality and lack of standardization for the equipment and software, as well inconsistent to inadequate internet infrastructure at the court site or the court user's end. Having one platform will assure the necessary standardized technological requisites for all courts, justice partners, and court users. Requisites and standards for VRI must consider the technology's inherent limitations and must have clear technological minimums. Such standards should be established through the process of detailed studies with input from frontline staff interpreters and stakeholders.</p> <p>5. VRI should only be used with the knowing and voluntary consent of the court user.</p> <p>CFI and IGA recognize the Judicial Council's and Courts' desire to control and reduce costs. However, the VRI use should not be done at the expense of LEP court users' rights. We are extremely troubled that the ITAC committee failed to mention</p>	<p>The committee recognizes that obtaining LEP court user consent to using VRI on the record is an important best practice. The "Suggested Language for the Judicial Officer When Considering Objections Related to Remote Interpreting" has been reinserted back into the revised guidelines. The committee also</p>

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			<p>that LEP litigants/defendants have the right to have all parties physically present in a court proceeding and that any VRI event must be done with the knowing and voluntary waiver of an in-person interpreter by the LEP court user. It is disturbing, to say the least, that in the ITAC proposed changes the entire section Suggested Language for the Judicial Officer When Considering Objections Related to Remote Interpreting was removed. In many ways, this places both the court and LEP court user at risk of failed due process and degrades the integrity of our justice system.</p> <p>Courts, bench officers, justice partners, and LEP court users look to the Judicial Council for guidance. The failure to mention the right to have all parties present and removing a bench officers' responsibility to take personal appearance waivers can be construed as discriminatory. VRI is neither a black and white nor a one size fits all solution to a court's language access needs. We vigorously caution against expanding VRI at the expense of due process, meaningful access, and lacking adequate protections of constitutional rights. 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 the standard set in <i>People v. Menchaca</i> is "nothing short of a sworn interpreter at the defendant's elbow" will satisfy this constitutional guarantee. [FN1]</p> <p><i>1 People v. Menchaca, (1983) 146 Cal. App.3rd 1019, 1026.</i></p> <p>6. The Consideration and Guidelines for Video Remote Interpreting in Court Proceedings section should include a robust well-rounded education and training manual</p>	<p>recognizes that in-person interpreting is preferred, but that remote interpreting also provides an important service and safety mechanism to provide LEP court users with access to a qualified interpreter.</p> <p>The Judicial Council is working with the National Center for State Courts to develop VRI training modules for courts and interpreters across standard platforms to support these</p>

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			<p>regarding the appropriate use of VRI.</p> <p>Lessons learned from the various unorthodox uses of VRI during the pandemic indicate a need for a more profound understanding of language access in the implementation of VRI. Among the greatest challenge interpreters faced while providing VRI services during the pandemic is that most bench officers, IT staff, interpreter coordinators, and jail staff scarcely understand, have awareness of, or sensitivity to the linguistic challenges and barriers that interpreters face under normal non-VRI conditions. Education and training should be among the highest priorities in this proposed recommendation. Bench officers, IT, interpreter coordinators, and jail staff should learn, become aware of, and understand the interpreters' role and what is needed to ensure that VRI is being conducted in a way that will guarantee necessary protections for LEP users. Reports from interpreters about the material to be covered follow.</p> <ul style="list-style-type: none">• Interpreters shared that many bench officers were unwilling to stop when interpreters voiced technical impediments, speaker's voices not coming through clearly due to feedback or unstable connections, speaker pace too rapid for the technology's processing, and not pausing the proceedings after interpreters reported connections were lost.• Interpreters reported that most IT staff had no understanding of what interpreters do and their lack of knowledge resulted in setups and platform architecture that did not coincide with interpreter or user requisites. Furthermore, this has resulted in VRI station locations that are prone to background conversations, noises, and	<p>guidelines. This training will be developed with and presented by experts including court interpreters. Best practice material for VRI events will also be periodically updated.</p>

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			<p>interruptions. Interpreters also reported that IT often ordered wrong equipment such as microphones and headsets that were not suitable for VRI. Other interpreters reported that IT placed interpreter VRI stations in a high traffic area where on video you can see and hear other staff walking and talking and janitorial cleaning and vacuuming directly behind the interpreter while on the record.</p> <ul style="list-style-type: none">• Non-interpreter coordinators also failed to understand what language access duties are demanded of the interpreter when using VRI. The result is often being unable to provide IT with end point information or explain why a separate private channel is needed for attorney client conversations. Often coordinators are unable to instruct to interpreters on how to render plea forms using VRI, to provide guidance to IT for appropriate uses of VRI, or what constitutes a viable connection.• Jail staff are often perceived as dismissive when LEPs report technical problems. Interpreters reported that LEP are often seen and heard saying that they are unable to hear the interpreter. Instead of rectifying the problem and reporting it the court, jail staff are heard telling the LEP what to answer, instead of reporting and asking the court to repeat the question after the technical issues are fixed. Also reported was that jail staff often remove the LEP headset before proceedings were concluded.• There is no recognition of the difficulty and fatigue VRI causes to interpreters and how that fatigue impacts the accuracy of the interpretation. Generally, in-person team interpreters switch every 30 minutes to avoid fatigue	

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			<p>and ensure the accuracy of the interpretation; with VRI it becomes imperative for interpreters to rest between each VRI event and switch every 15 to 20 minutes of interpretation during the event.</p> <p>CFI and IGA recommend that adequate training be given to all stakeholders involved in VRI. Training curriculum should include: correct use of equipment, fundamental role to provide meaningful language access and due process, protocols for reporting impediments, the need to interrupt court proceedings for repetitions and clarifications, the importance of and protocols for maintaining confidentiality, modes of interpreting, the importance of providing documents and information beforehand, and professional standards and ethics for court interpreters.</p> <p>7. A clear view of ALL speakers is essential for the success for VRI.</p> <p>Interpreters are the conduits of communication. No other individual in the court will have the knowledge and understanding of what tools and practices are needed to make VRI events successful. Interpreters are required to collaborate daily with stakeholders who are soft-spoken, mumble, or are otherwise ineloquent. Interpreters naturally rely on extralinguistic cues, such as general body language and even lip reading to confirm auditory uncertainties and shades of meaning. The use of VRI during the pandemic has given new meaning to the level of difficulty an interpreter's auditory capabilities encounters. The pandemic has proven the importance of visual cues from all speakers to ensure the</p>	

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			<p>precision of the interpretation and minimize the need for clarification. Therefore, having a clear view of all speakers is an essential tool for VRI to work correctly. The likelihood of a VRI event being successful increases with a platform that has the capability to visually tile all speakers, equipment with an integrated camera, and having the camera on during the proceedings.</p> <p>8. Clear best practices need to be stated.</p> <p>Access to justice is not merely a slogan; it is a promise that can only be delivered through deliberate and thoughtful consideration of the needs and interests of the individuals directly impacted. Clear best practices need to be incorporated in the proposed changes. The proposed changes to The Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language Interpreted Events does not include clear best practices. It would be unwise to assume that anyone would automatically know what the VRI best practices are. VRI best practices should be clear and outlined in The Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language Interpreted Events. Best practices to be included:</p> <ul style="list-style-type: none">• VRI is used only when the LEP individual provides informed and voluntary consent to waive right to an in-person interpreter. If an LEP individual does not consent, good cause would exist to waive time limits to continue the case to a date when an in-person interpreter is available.• VRI is not used for minors, nor persons with cognitive	<p>Best practices and additional resources to support interpreters and courts will be updated and developed.</p>

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			<p>impairments or mental illness.</p> <ul style="list-style-type: none">• VRI is not used for a language of which the county has interpreter employees or access to in-person interpretation services through the cross-assignment system pursuant to Government Code section 71810.• VRI is used only in the case of the unavailability of a certified/registered in-person interpreter.• VRI is not utilized within the same courthouse or county jurisdiction in which the VRI provider installation is based. Instead, VRI is used only inter-county, on an intermittent basis to fill gaps in language access.• VRI is only used for brief, routine, non-complex matters, non-evidentiary hearings. Additionally, there must be a showing s made that the court did not have sufficient notice and time, as well as prove it had done its due diligence to secure a live interpreter in the language pair needed.• VRI should not be utilized for complex matters of long duration, evidentiary proceedings, or those involving witness testimony and cross-examination.• Appropriate steps should be taken to protect attorney-client privileges, including having a dedicated channel allowing for non-public conversations between an attorney and his/her client.• VRI should only be used of court users and justice partners that have access to the recommended equipment, platform software, and internet access that complies with the technological requisites needed to render VRI services and thereby meaningful language access.• Interpreting under normal circumstances is challenging,	

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			<p>it is imperative to strictly conduct all proceedings in accordance with the guidelines and protocols.</p> <ul style="list-style-type: none">• VRI should be used with a reliable platform and standardized equipment for all courts.• VRI should be used to expand access outside of the courtroom to provide language access, particularly in the case of the interview and mediation process. <p>9. Data collection should be an ongoing capture and monitoring of the effectiveness and deficiencies of the technology, the number and name of languages used, whether the use of certified/registered interpreters within and across regions has increased, and whether there is an increased use of employee interpreters across regions.</p> <p>Data collection is essential for future improvements in The Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language Interpreted Events. Data gathered should include a well-rounded view of VRI's effectiveness and deficiencies. Fundamental information that should be included: did VRI deliver the highest level of due process and meaningful language access; did VRI use increase access to certified and registered interpreters as opposed to provisionally qualified interpreters; interconnectivity information regarding the reliability and stability of the connection; reliability of equipment; and comparison of reliability across all platforms used.</p> <p>Conclusion It was disappointing to see that the proposed changes to The</p>	<p>The committee agrees that data collection is an important tool to measure the effectiveness of VRI and to achieve continuous improvements.</p>

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			<p>Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language Interpreted Events were not circulated to other committees for recommendations. Committees such as Providing Access and Fairness, and its language access subcommittee, as well as the Court Interpreters Advisory Panel would have provided ITAC a wealth of information and valuable input.</p> <p>It is profoundly disconcerting that the current proposed changes removed much of the important and fundamental language incorporated in the previously approved version. If changes proposed to The Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language Interpreted Events were to be approved, it would leave all courts, justice partners, interpreters, and LEP court users with a mere skeleton guide with little direction, larger digital divide and even fewer safeguards.</p> <p>We recognize the need to update technological specification and requisites; however, in this newer version very little technological specifications and requisites were included. The instructions as to relay interpreting are ambiguous at best. Instead of better direction and detail, many fundamental and imperative due process rights were removed; the perception being that meaningful language access in the courts is inconsequential. For example, some key elements were removed in the version presented:</p> <ul style="list-style-type: none">• Implementation guidepost that VRI be used in brief proceedings such as arraignments.• Language access planning integrated with information and web technology to accommodate and anticipate all	

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			<p>the differing capabilities expected, including total bandwidth, equipment, and training.</p> <ul style="list-style-type: none">• Instructions to become familiar with factors that make an event VRI appropriate and the potential drawbacks of using VRI technology and in doing so anticipate and avoid problems.• Example language to bench officers for in-person interpreter waivers and objections to the use of a VRI. <p>In the end, we urge the committee that instead thinning down the present recommendations, add detail and clarity to it. VRI is not a black and white or a one size fit all solution, nor something to be mused over and experimented as each court may. Any recommendation on the use if VRI should be detailed and robust. The current proposed recommendations are not in line with the courts' needs, nor the state's constitutional requirements. Lives depend on this; more importantly, equal justice before the law depends on the committee getting this right.</p>	
6.	Maria del Carmen Munoz Certified Court Interpreter Region 2	NI	<p>I'm writing in response to the AOC's request for comments regarding Video Remote Interpreting (VRI). I am sure you will receive plenty of comments from interpreters, professional organizations, judges and court administrators. I want to focus on two points.</p> <ol style="list-style-type: none">1. While VRI can enhance language access for LEP individuals and economize time and resources, it is not without its technical and noise problems. <p>TECHNICAL</p>	The committee thanks the commenter for their comment.

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			<ul style="list-style-type: none">• Lack of technological dexterity by most LEP members of our community.• Bad connections and other technological problems.• Lack of video capacity on some telephones owned by members of our community modest means. <p>DIVERSE EDUCATION LEVELS OF LEP USERS</p> <ul style="list-style-type: none">• Lack of literacy (ability to read and write) by some LEP members of our community. <p>NOISE</p> <ul style="list-style-type: none">• The noise surrounding the LEP person (children crying in the background).• The noise in and around jails and detention centers.• Inmates are close in proximity to each other and sometimes the audio feed of one courtroom is heard in other courtrooms. <p>2. The middle of a pandemic is not an appropriate time to implement changes or new policy. Changes to current practices should be put in writing after we have more experience with remote interpreting and after carefully reviewing data that ACCURATELY and COMPLETELY reflects reality. Interpreters are STAKEHOLDERS as well as the LEP public we serve.</p> <p>Any changes to policy in a non-pandemic setting must include genuine participation from those actually doing the interpreting work-INTERPRETERS! We need to hear from professional organizations, unions and individual interpreters.</p>	

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			As public servants, we should not impose something on the public in a non-pandemic setting without participation from the people and communities we serve. LEP users are the reason for our being. We need to hear from them as well as civil rights organizations such as local, state and national organizations that serve LEP populations as well as LEP users in our individual regions.	
7.	Dependency Legal Services by David M. Meyers, Managing Attorney	A	We support this proposal and thank the JCC for taking the time to enumerate these guidelines. As lawyers who represent children and parents in California's juvenile dependency courts, we would ask that you add language to the paragraph on page 10, #2, in reference to confidential, attorney-client communications. Specifically, arrangements must be made to have privileged communications before and after the hearings. While this may be inferred from the paragraph, we feel it is important that it be directly stated. Dependency hearings are often conducted quickly and its participants often speak in code, citing federal and state requirements at each hearing. Parties rarely completely understand what happens during the proceedings, thus necessitating conversation before and after the actual proceedings. Since the onset of the pandemic, access to court interpreters has become more difficult, costly and time consuming.	The committee thanks the commenter for their comment. Language has been added to the guidelines to more clearly recommend that courts work with attorneys to ensure that VRI solutions allow for privileged communications before, during, and after hearings.
8.	Carole Glasser, Federal and State certified court interpreter	N	I have worked as an interpreter in court for several decades, and most recently, due the pandemic, have had the opportunity to experience video remote interpreting in court daily for many months.	The committee thanks the commenter for their comment.

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			<p>There are severe limitations put on access and meaningful participation for LEP parties who rely on interpreters when the interpreter appears remotely. In my experience the use of VRI has been extremely frustrating for interpreters, for the LEP participants, and for the courts. There are many causes: inadequate technology both in the courts and in remote locations; the inability to perform simultaneous interpreting via Zoom and similar platforms; and the inability to see and hear participants are just a few examples.</p> <p>Interpreted proceedings done remotely often take longer than in person proceedings due to the frequent need for repetition due to problems with the sound, the connection, people's devices, and the necessity for all interpreting to be done consecutively unless another connection is established.</p> <p>The increased interpreter fatigue when VRI is used is real, and often results in the need for interpreters to take more frequent breaks and/or to work in teams.</p> <p>Instead of guaranteeing some minimum standards for quality interpreting to provide access to just for all, the proposed guidelines weaken the existing guidelines. I object to the most recent revisions to the existing guidelines.</p>	<p>The guidelines for VRI do not attempt to represent rules or standards but are intended to provide general guidance for courts including key considerations and recommended minimum technology specifications for VRI for spoken language events. The specifications are designed to allow flexibility for courts and to allow for future advances in technology, including advances in sound/audio and video quality, and capability to provide private video conferencing. The committee recognizes there will be a need for training and best practices to support the recommended guidelines and to ensure the successful use of VRI.</p>
9.	InterpretAmerica by Katharine Allen,	AM	Overall the guidelines are very good. Here are my recommendations to clarify a couple of key aspects:	The committee thanks the commenter for their comment.

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	Co-President		<p>1) When interpreting in the simultaneous mode, please make specific the recommendation that ALL speakers have a headset, external mic or at least are using their earbuds. The PA system in a courtroom will NOT provide adequate sound for the interpreter in this mode - as they have to hear what is being said above their own voice. And in general, anyone appearing remotely should always be encouraged to use a headset, even for consecutive mode. Interpreters cannot interpret what they can't hear and the use of the computer mic on it's own allows for many sound problems that are easily overcome by the simple use of headsets or ear buds.</p> <p>2) Make specific recommendations for when interpreters should have a partner. How many hours can an interpreter work alone consecutively before needing a partner (I would say maximum 3). And especially for simultaneous solutions, interpreters should not work for more than an hour alone (ideal would be 30 minutes). Multiple studies show that interpreting remotely increases fatigue. Interpreters are like fighter pilots in terms of the level of concentration required for simultaneous interpreting. Their performance WILL DEGRADE if forced to work overlong alone.</p> <p>3) Interpreters should get paid for the time they spend on technical rehearsals and checks prior to a remote session.</p>	The Committee appreciates this comment. The guidelines have been revised to recommend that, if possible, all participants in remote interpreting events use headsets or earbuds with built-in microphones to improve sound clarity.
10.	Legal Services Organizations: Legal Aid Foundation of Los Angeles	NI	We are grateful for this opportunity to provide comments on the Recommended Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) for Spoken Language Interpreted Events (VRI Guidelines). The undersigned organizations are committed to language justice and have a long	The committee thanks the commenter for their comment.

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	by Joann Lee, Special Counsel Los Angeles Center for Law and Justice by Carmen McDonald, Director of Legal Services Legal Services of Northern California by Stephen Goldberg, Regional Counsel California Rural Legal Assistance, Inc. by Alena Uliasz, Language Justice Manager Family Violence Appellate Project by Jennafer Dorfman Wagner, Director of Programs Community Legal Aid SoCal by Kate Marr, Executive Director Kids in Need of Defense		<p>history of fighting alongside communities in California with limited English proficiency (LEP) to meaningfully access the courts and other government services. We provide these comments within the context of our ongoing experiences serving litigants with LEP in family, probate, unlawful detainer, and other civil matters across courts statewide.</p> <p>I. Summary</p> <p>We write you this comment letter to highlight the dire state of language barriers related to accessing court services. In a state where 44% of people speak a non-dominant language, 18% have LEP [FN1], one in five people have low literacy [FN2], and 21% of adults have a hearing-related disability [FN3], many linguistically marginalized California litigants have been effectively shut out of the state’s court system during this public health crisis. Access to the courts is a fundamental, sacred right in our justice system. It is also too often denied to those most in need of the guarantee. As legal aid advocates, we seek to ensure and strengthen access to justice for historically marginalized and disenfranchised communities – Black, Indigenous, and people of color (BIPOC), the indigent, those who do not use English as their dominant language, and self-represented litigants – who have had a harder path pressing for their rights.</p> <p>In this letter we present the following priorities to strengthen the VRI guidelines:</p> <ul style="list-style-type: none">• The Judicial Council must issue clear, effective, and enforceable VRI policies and protocols, with a plan to be created by each county;	<p>The guidelines for VRI for spoken language do not attempt to represent rules or standards, but provide general guidance including key considerations and recommended minimum technology specifications for VRI for spoken language events. The specifications are</p>

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	<p>(KIND) by Cindy Liou, Esq., State Policy Director</p> <p>LevittQuinn Family Law Center by Ana M. Storey, Executive Director</p> <p>Advancing Justice - Asian Law Caucus by Winifred Kao, Senior Counsel</p> <p>ACLU of California by Kevin G. Baker, Governmental Affairs Director</p> <p>Neighborhood Legal Services of LA County by Yvonne Mariajimenez, President and CEO</p>		<p>1 U.S. Census Bureau, <i>American Community Survey Language Spoken at Home by Ability to Speak English, Estimates. 2015 – 2019 American Community Survey</i>: https://data.census.gov/cedsci/table?g=0400000US06&tid=ACSDT5Y2019.B16001.</p> <p>2 For information about literacy in California, see the National Center for Education Statistics: https://nces.ed.gov/naal/estimates/StateEstimates.aspx.</p> <p>3 Center for Disease Control. (2017). <i>National Health Interview Survey</i>: https://www.cdc.gov/nchs/data/health_policy/hearing_loss_table_SEs.pdf.</p> <ul style="list-style-type: none"> • Absent extraordinary circumstances, in-person interpreting must remain preferred in accordance with other considerations and best practices; • Courts must prioritize access for people with LEP who also have limited tech access and/or literacy, by: <ul style="list-style-type: none"> ○ Providing clear communication to the public about options to participate in remote proceedings using multilingual plain language materials; ○ Providing tech support to litigants before, during, and after remote proceedings with VRI, including multilingual plain language instructions and access to trained staff who provide in-language training and live support; ○ Working in partnership with local agencies and organizations to provide workstations and remote studios where litigants can participate in remote events with live in-language tech support; <ul style="list-style-type: none"> • There must be no fees to utilize remote platforms; • The use of VRI in court events must consistently reflect the following best practices: <ul style="list-style-type: none"> ○ Ensure that the use of VRI does not cause undue delay; ○ Use platforms with integrated remote simultaneous interpreting (RSI) capabilities; ○ Protect interpreter health, safety, and quality of interpreting via the use of team interpreting; 	<p>designed to allow flexibility for courts, support physical and virtual courtrooms, and to allow for future advances in technology.</p> <p>The committee recognizes that in-person interpreting is preferred, but that remote interpreting also provides an important service and safety mechanism to provide LEP court users with access to a qualified interpreter. Best practice and education materials will also be developed for interpreters, branch stakeholders and the public including LEPs.</p>

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			<ul style="list-style-type: none">○ Promote accuracy by providing interpreters with materials to prepare in advance;○ Ensure that all parties can be clearly seen and heard, with meaningful participation by all;○ Begin with an oral explanation of how the interpreting will work;○ Allow for private breakout rooms with access to interpreting when needed;○ Ensure that litigants with LEP are permitted to present evidence and are provided with a clear understanding of what occurred in the hearing, including sight translation of all court orders;○ Create mechanisms to monitor the quality of remote interpreting;<ul style="list-style-type: none">● Courts must strengthen protocols for hybrid remote-onsite events with VRI;● VRI proceedings should be expanded to other court events. <p>We describe each of the priorities listed above in more detail below.</p> <p>II. The Judicial Council must issue clear, effective, and enforceable VRI policies and protocols, with a plan to be created by each county</p> <p>While we appreciate the California Judicial Council proposing these VRI Guidelines, they are issued as we near the one-year anniversary of the worst public health crisis in a century. Since March 2020, what has emerged is a complex county-by-county patchwork of different platforms, rules, and protocols, creating almost insurmountable barriers that bar litigants with LEP from</p>	

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			<p>accessing the courts. During these unprecedented times, the divergence in court access between resourced and less-resourced litigants has yawned into a chasm. As a result, members of the populations that we serve are left behind to bear risks and losses to their health, safety, and fundamental rights.</p> <p>The need for improved language access in virtual hearings and other remote court events is abundantly obvious and incontrovertible. In this letter, there are numerous examples of courts that have proceeded in developing technologies and other solutions without any meaningful engagement with litigants and communities that are most in need, resulting in language services being a mere afterthought or falling through the cracks completely. The methods of meeting these needs have some flexibility, but it is critical that the Judicial Council and court leadership understand the evolving standards of best practices for remote interpreting in order to effectively meet existing language access mandates without merely being performative.</p> <p>To this end, these VRI Guidelines must be more than suggestions. These VRI Guidelines overall are too generic and vague, providing little direction to court staff and judges in understanding practical and proactive steps that can be taken to provide meaningful language services. Examples and scenarios with specific details should be incorporated into each section to provide actual guidance on issues that may arise and how to address them. Each county must be required to create a plan for implementing the VRI Guidelines, describing how they will ensure meaningful language access in accordance with the policies, protocols, and best practices described below. Each plan must also include required training for all judicial officers</p>	

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			<p>and court staff.</p> <p>III. Absent extraordinary circumstances, in-person interpreting must remain preferred in accordance with other considerations and best practices</p> <p>Despite the rise in the use of remote interpreting during the pandemic, language justice advocates still recognize in-person interpreting as the best practice to promote the meaningful participation of people with LEP. Research shows that remote interpreting has multiple drawbacks when compared with on-site interpreting, including a faster onset of interpreter fatigue that leads to decreased accuracy and more interaction problems that cause confusion and lost information. [FN4] Therefore, in the bulleted list of considerations for VRI in a court event, there should be an additional listing for “whether extraordinary circumstances exist, such as a disaster, public health crisis, or special considerations upon request of court users.” This bullet point should indicate that if these extraordinary circumstances do not exist, the preference must be for in-person interpreters if the parties requiring interpreters are appearing in-person, in accordance with the other considerations. In the absence of such safeguards, court staff and judicial officers may default to VRI for convenience and costs, at the expense of providing high-quality interpreting.</p> <p>IV. Courts must prioritize access for people with LEP who also have limited tech access and/or literacy</p> <p>The VRI guidelines state in the “About VRI” section that court users with LEP should “be informed of how to use the court’s</p>	

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			<p>technologies and platforms. This may include translated instructions and recorded online orientations, etc.” This should be more than a suggestion but a requirement for all courts and should be integrated with the recommendations described below in order to fully support all litigants in accessing the courts remotely, regardless of their preferred language, level of formal education, or the technology to which they have access at home.</p> <p><i>4 See Braun, S. (2013). Keep your distance? Remote interpreting in legal proceedings: A critical assessment of a growing practice. Interpreting 15 (2), 200-228; Braun, S. (2015). Remote interpreting. In H. Mikkelsen and R. Jourdenais (Eds.), The Routledge handbook of interpreting (pp. 217-235). New York, NY: Routledge; and Moser-Mercer, B. (2003) Remote interpreting: assessment of human factors and performance parameters. Communicate! Summer 2003.</i></p> <p>A. Courts must provide clear communication to the public about options to participate in remote proceedings using multilingual plain language materials</p> <p>For too many communities in California, the absence of clear and comprehensible communications has been the defining characteristic of their court system’s pandemic-era operations. Litigants depend on the court for information about the status of court operations, hearings, and other significant updates relating to scheduling, cases, and the expansion of remote options. But unlike attorneys and well-resourced litigants, they are not connected to bar organizations or lawyer colleagues. Nor do they have the time and training to make sense of the court’s general orders and notices to attorneys. For the nearly seven million residents of California who do not use English as their dominant language, [FN5] the absence and incomprehensibility of court communications was even more stark. These failures</p>	

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			<p>came despite the obligations to follow the Strategic Plan for Language Access in the California Courts (LAP), [FN6] Los Angeles Superior Court Limited English Proficiency Plan, [FN7] and numerous other civil rights mandates. [FN8]</p> <p>For litigants from linguistically marginalized communities, the courts' responses to the pandemic exacerbated preexisting shortfalls in court access. Issues of language access, systemic bias, scarce resources, power imbalances, and the constant stress of interminable struggles to assert their rights were already pervasive. Now since the pandemic, the absence of an appropriate and necessary court response has introduced additional uncertainty, risk, and misinformation. Due to the absence of other accessible alternatives, many litigants defaulted to traveling to the courthouse desperate for information. In the early months of the pandemic, many of the clients we saw believed that the courts, along with most other government offices were closed. This included domestic violence victims who waited to file for critical protections because the court had not informed them that domestic violence restraining order filings were among the "essential functions" for which it remained open. The already overburdened legal services community was often left to fill these communication and information gaps, where it could.</p> <p>The information currently available to the public on the many courts' websites are limited, and they are maladapted to the considerable digital divide that separates represented and more-resourced litigants from self-represented and low-income litigants. These websites are, for the most part, only in English, and for many courts, the main source of translation is a Google</p>	

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			<p>Translate bar, which is known to be an inaccurate and unreliable form of translation of legal and complex information without appropriate human review.</p> <p><i>5 U.S. Census Bureau, 2019 American Community Survey 1-Year Estimate, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over, California.</i></p> <p><i>6 Strategic Plan for Language Access in the California Courts, Judicial Council of California, 2015</i> https://www.courts.ca.gov/documents/CLASP_report_060514.pdf.</p> <p><i>7 Superior Court of California, Los Angeles County, Limited English Proficiency Plan, 2019 LEP Plan Revisions</i> http://www.lacourt.org/generalinfo/publicnotice/pdf/lep.pdf.</p> <p><i>8 See Title VI of the Civil Rights Act of 1964 and its implementing regulations (42 U.S.C. § 2000d et seq.; 28 C.F.R. Part 42, Subpart C); California Constitution; California Evidence Code 756; California Government Code 68092.1; California Government Code 7290 et seq; California Government Code 11135.</i></p> <p>Google Translate has also been rejected by the Department of Justice as an acceptable method of meeting legally required translation mandates. As a result, those on the wrong side of these linguistic and digital divides have little way to learn of updated remote filing options, of the specific and often strictly enforced instructions for those filings, of what court services remain or have recently again become available, and of the detailed requirements for making use of those services. Individuals who do not use English as their dominant language are not receiving notice of essential case information in a language that they can understand. Litigants are not receiving translated notices of their hearings being postponed or rescheduled. They are not provided with translated explanations of whether they can appear in-person or remotely, or instructions on how they can appear remotely. Some are skeptical of an</p>	

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			<p>unfamiliar system that has not been explained to them in a language or manner they can comprehend. This distrust, combined with other factors such as inadequate technology, leads many to still bear the risk of appearing in-person. As Adam Murray, executive director of Inner City Law Center, recently stated in a Los Angeles Times piece, “If you walk into eviction or traffic courtrooms, you are not seeing wealthy or middle-income people. It’s poor people who have to go in and adjudicate their cases in person.” [FN9]</p> <p>Court must take a multi-pronged approach to provide litigants with notice and a clear understanding of their options to participate in court events remotely. Any written documents describing options to use remote technology must be in plain language and translated by a qualified human translator into the top 10 languages in each county. In consideration of individuals with low-literacy, these explanations should be available as visual and/or video guides. Counties that use the same platforms should share resources to develop some of these materials together. These multilingual materials should be easily accessible on the website’s home page, placed on social media, and distributed through legal services groups, community organizations, libraries, schools, food distribution centers, and other public places. Notices of hearings should also include URLs for local court information regarding options for remote access and the availability of language services. Self-help centers and each court’s Language Access Representative should work together to ensure the message is disseminated throughout our communities.</p> <p>B. Courts must provide tech support to litigants before, during, and after remote proceedings with VRI,</p>	

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			<p>including multilingual plain language instructions and access to trained staff who provide in-language training and live support</p> <p>There is no doubt that technological advancements have, by necessity, developed at an accelerated rate during the public health crisis. Launching and expanding such options has eased the burden and stress for some litigants and promoted public health. These developments are often the product of commendable effort, dedication, and investment. But they are also often created to the exclusion of self-represented and linguistically marginalized litigants. When designers of technology fail to account for how the substantial population of litigants with LEP will be able to make meaningful use of the technology, their innovations exacerbate, rather than ameliorate, the digital divide.</p> <p><i>9 Los Angeles Times, February 5, 2021, Workers in L.A.'s courts are dying of COVID-19 as in-person hearings, trials continue, Matt Hamilton, at https://www.latimes.com/california/story/2021-02-05/covid-complicates-in-person-trials-la-courthouses.</i></p> <p>Unfortunately, many local courts' technological advances and remote systems have reinforced a two-tiered access to justice. Having different platforms in different counties within a single state also creates inconsistency and confusion. The first step is, as stated above, to let litigants know that remote platforms exist. Then, these platforms must be made accessible to all court users. In Los Angeles County, for example, the baseline problem is that the court's remote platform website has lots of information, but it is not friendly to self-represented litigants or those who do not use English as their dominant language. The almost 100</p>	

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			<p>page remote platform guide, while helpful for attorneys, is not in a format that lends itself to easy navigation and understanding for those in the communities we serve – especially those whose only computer is a smart phone. But without reading through the lengthy guide, one would not know that common remote platform options such as screen sharing and breakout rooms are generally not an option on the remote platform. Our community members are also unlikely to realize that they must take many actions up to a week or more in advance of the hearing – even if they did find the guide by that time. Obstacles such as these drive litigants to the only option that remains - appearing in court in-person.</p> <p>To address this problem, we urge the courts to create Tech Access Help Centers with in-language support in coordination with each county’s Language Access Coordinator and self-help centers. Such centers would support access to remote court events by:</p> <ul style="list-style-type: none">● Collecting data on the types of devices and WiFi to which litigants have access;● Designing and disseminating multilingual plain language instructions to support court users in accessing remote platforms;● Offering pre-hearing virtual workshops for litigants to teach them how to use remote platforms with VRI, which would include the opportunity to access a test site to identify and troubleshoot potential audio, bandwidth and other tech issues;● Providing live in-language tech support for court users during events to address challenges as they arise; and● Providing follow-up support after the remote court event to ensure litigants have the information they need for next steps.	

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			<p>While these measures require initial investment in training staff and developing resources, in the long-term they will promote efficiency by preventing problems that arise when litigants lack the tools they need to engage in remote court events.</p> <p>C. Courts must work in partnership with local agencies and organizations to provide workstations and remote studios where litigants can participate in remote events with live in-language tech support</p> <p>Even litigants who learn how the courts' remote platform works may not have the equipment, internet access, or private space they need to participate effectively. When it comes to remote hearings and the digital divide, resourced litigants can use remote options and make appearances comfortably from the safety of their own homes. For less resourced litigants, it can be a Kafka-esque waste of time that ultimately results in their risking their health and going to court. To access most court events remotely, court users must have a smartphone or computer with a camera and microphone and reliable internet access. For low-income domestic violence survivors, they must have a safe and private location to make a remote appearance that does not reveal their location. Concerns about bias regarding their housing situation or lack of childcare assistance means they must find a neutral background in their homes for their video appearance and arrange for their children to be quiet and out-of-sight. Too often, the result is that many litigants are left with no option other than to accept the health risks of going to the court for information. Doing so is all the more difficult for the many members of our client communities who are the sole caregivers to their children.</p>	

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			<p>As a solution to this problem, we recommend that courts work with community partners to develop workstations and remote studios for court users, whether within the courthouse, community centers, or other venues. The VRI Guidelines should direct local courts to not only provide workstations in the courthouse but also partner with local nonprofits and other government agencies and entities, such as libraries and schools to provide these spaces, with staff trained to provide in-language technical support. One example is a pilot launched for domestic violence survivors to appear via a remote studio for their restraining order hearings from a family justice center. A remote hearing studio made the court's remote options more accessible and provided an opportunity to provide survivors a more trauma-informed experience. A computer with a camera, microphone, and WiFi is set up for the survivor by an advocate. The survivor has a private space where they can have their children, especially if they do not have alternative childcare options, but have a separate space for them during the hearing. The survivor does not have to face the abusive party in-person. There is an advocate available to provide basic technical support and to serve as a support person if needed. There are printers, transportation vouchers, and resources for other domestic violence supportive services available. This has just been established, and we are hopeful that these safe remote studios will be expanded and maintained even after the pandemic. This is very helpful for the survivors assisted, but it is just a drop in the bucket. It is a good proof of concept but a more sweeping effort from the court is necessary to make a real dent. And we know that such court-initiated efforts are happening. The Superior Court of the District of Columbia, along with a few</p>	

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			<p>other jurisdictions, have created public kiosks where litigants who do not have WiFi or computers can appear for online hearings. Some of these should be highlighted in the VRI Guidelines as models for local courts.</p> <p>Remote hearings could become an effective option for people with LEP if courts provide better communication, tech support, and access to technology. Without such resources, the court's strong discouragement of in-person interactions puts litigants to a no-win choice. In order to achieve this, the VRI Guidelines should require increased multilingual outreach, tech support, plain language materials, and workstations under "Key Considerations." Further, any mention of instructional materials, such as in "Visual/Auditory Issues, Confidentiality, and Modes of Interpreting When Working Remotely" at #7, and "Appendix A – Minimum Specifications for Remote Interpreting" should incorporate these strategies as well.</p> <p>V. Courts must not require fees to utilize remote technology</p> <p>The VRI Guidelines should include in "Key Considerations" that courts should not charge fees to participate in virtual hearings. In some courts, to waive the remote appearance fees, litigants must file their request many days in advance of the hearing to have an approved fee waiver in time to schedule a remote hearing. For hearings scheduled in a short turn around (i.e., request for DVROs) and with delays in courts processing filings, low-income litigants are forced to rush to file a fee waiver request or end up paying for the appearance while waiting for the clerk to process the fee waiver request. In one</p>	

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			<p>case, it took four court days for the fee waiver order to be processed. Afraid that the fee waiver was still pending after four court days, on the fourth day (which was one day before the hearing), the litigant dropped off the fee waiver request in hopes that filing once more would get the fee waiver request granted that day. Later that day the original request that was filed four court days prior was granted. Ultimately, the litigant was able to schedule a remote appearance, but as a low-income litigant with LEP, it was challenging and overwhelming to navigate the process to utilize remote technology.</p> <p>Further, any other expenses incurred related to virtual events, such as setting up witnesses for hearings and trials through local court reporter offices, should be recoverable as costs, and subject to payment under the Transcript Reimbursement Fund, as applicable.</p> <p>VI. The use of VRI in court events must consistently reflect the best practices described below</p> <p>A. Ensure that the use of VRI must not cause undue delays</p> <p>The section entitled “Guidelines for using VRI in a court proceeding” must include an assurance that VRI hearings shall not result in undue delays or differential treatment due to the need for an interpreter. Many cases requiring interpreters are being delayed through multiple continuances, requiring low-income litigants to get themselves to court or to appear through a virtual platform (and maybe pay for it), only to have to return again. In one example, a judicial officer would not allow a litigant to appear remotely despite being at high risk for</p>	

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			<p>COVID-19 because the litigant required an interpreter. The litigant’s attorney was forced to brief the issue. Imagine similarly situated litigants who appear without attorneys, who must struggle through whatever the court provides or instructs, putting their lives at risk, and not knowing they can demand more to enforce their language rights. [FN10]</p> <p>B. Platforms must have integrated remote simultaneous interpreting (RSI) capabilities</p> <p>Simultaneous interpreting is a best practice for most court proceedings, and all courts must invest in platforms that allow for RSI, such as Zoom with the Language Interpretation feature. RSI is an important feature for litigants who require interpreters because it allows the interpreter to speak through a specific channel heard by the litigant, and the litigant can also hear in the background what is going on in the proceeding while watching it on video. It is currently considered to be the most efficient form of interpreting for remote court hearings. We are pleased to see the VRI Guidelines’ preference for simultaneous interpreting in numerous instances. On page 10, the VRI Guidelines state, “A speakerphone is not recommended unless it accommodates the other requirements of these guidelines, including the ability to be part of a solution to allow for simultaneous interpreting when needed.”</p> <p><i>10 Studies show that 86% of low-income individuals’ civil legal aid issues are not adequately addressed due to a lack of legal aid resources. See Legal Services Corporation, The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans, 2017 (https://www.lsc.gov/media-center/publications/2017-justice-gap-report#bfrtoc-justice-gap-report).</i></p>	

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			<p>Page 11 of the VRI Guidelines state, “In longer matters, failure to have a technical solution that can accommodate simultaneous interpreting will result in delays of court time and may cause frustration with remote interpreting. Courts should use a technical solution that will allow for simultaneous interpreting.” Pages 12 and 13 also reference simultaneous interpreting as part of solutions for effective VRI. We urge the courts to enforce these guidelines, as many courts still use platforms that lack RSI capabilities, resulting in cumbersome, time consuming, and ultimately ineffective interpreting at remote court events. If platforms cannot accommodate RSI, courts must be required to create a user-friendly and meaningful alternative for hearings outside of matters that can proceed with consecutive interpreting, such as shorter procedural or uncontested matters. Currently, Zoom is the only known platform with integrated RSI capacity. In Los Angeles, the platform used, LA Court Connect (LACC), does not have capacity for RSI, but we already know that those in the private bar are separately stipulating to use other platforms, such as Zoom. Judges have indicated that they will allow and use Zoom, if agreed upon and set up by the parties. For those not resourced or sophisticated enough to set up private Zoom sessions, they are left with no option but to use LACC, and the courts have indicated that all interpreters in court proceedings will appear in-person and interpret consecutively for parties appearing remotely. But even this has not always been the case in our experience. In some cases, interpreters have appeared at trial solely by phone, which is unacceptable. In one of our cases, we assisted a Nepali speaking client file for a domestic violence restraining order just prior to the pandemic’s restrictions on court operations taking hold. The case was continued several times due to the court’s inability to secure an</p>	

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			<p>interpreter. When an interpreter was available nearly eight months later, access was only through the clerk's speakerphone. Due to social distancing, masks, courtroom acoustics, and the audio limitations of a speakerphone, everyone present in court had to scream in the direction of the phone for the interpreter to hear and interpret. This and the extended time required for consecutive, rather than simultaneous, interpreting was taxing for all involved and eventually resulted in another continuance to complete the hearing. After this, we had no choice but to specifically request that the court provide an in-person interpreter, which was fortunately provided at the next hearing.</p> <p>As noted above, remote appearances currently require consecutive interpreting when RSI platforms are not used. This requirement has engendered delay and confusion. As most courts are accustomed to simultaneous interpreting, the parties must know to stop and request consecutive interpreting. Even when self-represented litigants know to ask, some fear angering judicial officers when it is clear that this will cost more of the court's time, or that they will have less time for their hearings due to the expanded time spent on interpreting. Therefore, VRI Guidelines must require all courts to use technology and find solutions that can accommodate simultaneous interpreting, such as by adding Zoom as a platform provider for events requiring interpreting. Courts must be held to this as consecutive interpreting, especially if only telephonic, is not appropriate for longer or contested hearings. This should only be permitted after careful consideration and permission by all parties in extraordinary circumstances with no alternative solutions.</p> <p>To avoid consecutive interpreting, some courts are creating</p>	

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			<p>hybrid systems where there is a separate phone line for the interpreting to simulate RSI, but this is not acceptable in most cases.</p> <p>The hybrid set-up usually means that both the interpreter and litigant may have to use two different devices with sound coming from both to participate fully in the proceeding. This is extremely cumbersome and difficult to navigate both for the litigants and interpreters. In a recent remote hearing, both parties required interpreters, one appeared in-person and one appeared remotely. Two interpreters, one for each party, appeared in-person, and they were instructed to sit apart. One interpreter sat in the audience with the in-person party and used a headset and transponder to interpret. The other interpreter sat near the clerk and called the party who appeared remotely on a separate phone line, even though the litigant had patched into the virtual hearing platform through a tablet. During the hearing, the remote party reported that she could only focus on the phone line and could not follow what the judge, her attorney, or the other party were doing or saying in the hearing. And even though she and the opposing party spoke the same language, she could not hear what he was saying, nor was it relayed to her. She was effectively cut off from participating in her hearing.</p> <p>In general, knitting together a combination of web platforms with separate telephone lines to connect the interpreter audio is vastly inferior to integrated interpreting functions and should be discouraged. There are rare cases in which a hybrid approach with both a video conference and phone line may be the only option to enable relay interpreting between three or more languages. In such cases, extensive training is needed for all</p>	

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			<p>participants, including interpreters and litigants. Outside of those limited circumstances, the hybrid approach should be avoided.</p> <p>C. VRI protocols must protect interpreter health, safety, and quality of interpreting via the use of team interpreting</p> <p>VRI protocols must take into account the higher cognitive load imposed by remote interpreting. [FN11] Under #2, “VRI Time Management”, there should be more specific directives on the length of sessions in specific circumstances, when breaks are required, and the use of team interpreting. When interpreters interpret continuously for more than 30 minutes without a break, the accuracy of the interpreting suffers, which negatively impacts litigants with LEP and can compromise the accuracy of the record. As a solution, we recommend adding a specific requirement to use team interpreting for interpreted events that are more than 30 minutes long, with court interpreters who work in teams of two who switch off frequently.</p> <p>D. Promote accuracy by providing interpreters with materials to prepare in advance</p> <p>To promote the full understanding of all parties as well as the accuracy of the record, courts and the parties should provide interpreters with case materials in advance. [FN12] Materials should be provided with sufficient time for interpreters to review the information and research specialized terminology and legal concepts that apply to the case. These materials may include:</p> <ul style="list-style-type: none">● Case information and documents pertaining to the hearing;	

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			<p>11 See International Association of Conference Interpreters. (2020). <i>Reference Guide to Remote Simultaneous Interpreting</i>. Available at: https://aiic.ch/wp-content/uploads/2020/05/aiic-ch-reference-guide-to-rsi.pdf</p> <p>12 See, e.g., Washington State GR 11, at: https://www.courts.wa.gov/court_rules/pdf/GR/GA_GR_11_03_00.pdf</p> <ul style="list-style-type: none"> Names and spellings of all participants in the hearing to include but not limited to: litigants, judge, attorneys, and witnesses; Evidence related to the hearing, to include but not limited to: documents, photographs and images, audio and video recordings and any transcription or translations of such materials. <p>E. VRI protocols should ensure that all participants can be clearly seen and heard, with meaningful participation by all</p> <p>On page 10, “Visual/Auditory Issues, Confidentiality, and Modes of Interpreting When Working Remotely,” #1 states that a “clear view of the LEP court user is more important than a view of every speaker.” Although this may be true from the perspective of the judicial officer, it undermines the roles and experiences of court users and interpreters in being able to understand who is speaking, what they are saying, and the dynamics of the hearing itself. Court users and interpreters should have a view of all speakers in order for meaningful participation to occur. More details and examples regarding various options and scenarios would be instructive to include in this section.</p> <p>Audio quality is another critical aspect of protecting interpreter health and promoting high quality interpreting. During the pandemic, interpreters are reporting increased hearing-related</p>	

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			<p>injuries due to remote interpreting in settings with poor audio quality. [FN13] To ensure everyone can hear clearly and to protect the hearing of interpreters, all parties should be strongly encouraged to wear headsets with external microphones. The courts should consider exploring resources for litigants who cannot afford to purchase their own headsets without support.</p> <p>F. Begin with an oral explanation of how the interpreting will work</p> <p>In order to promote successful court events with VRI, #3, “Participants Who Must Have Access” must be strengthened to ensure that all parties understand the nature of the proceedings. In one example during a remote hearing, a litigant utilizing an interpreter by phone could not hear the interpreter but was unable to speak up because she did not know what was going on. Courts must always check for sound and video quality and encourage parties and attorneys to speak up if they cannot hear or see, especially considering that parties or attorneys might be hesitant in flagging any problems with the interpreting for fear of jeopardizing their case by annoying the judge. Judicial officers should be required to go through a series of statements before each hearing using VRI. The following is an example of a best practice in Washington State. [FN14]</p> <p><i>13 See Parliamentary Hearings Over Zoom an Ongoing Headache for Interpreters: https://www.cbc.ca/news/politics/parliamentary-translators-survey-1.5879907?mc_cid=34a2af6807&mc_eid=7227a6f9c7</i></p> <p><i>14 See Remote Interpreting Best Practices during the COVID-19 Emergency, https://www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/Remote%20Interpreting%20Best%20Practices.pdf.</i></p>	<p>The Committee appreciates this comment. The guidelines have been revised to recommend that, if possible, all participants in remote interpreting events use headsets or earbuds with built-in microphones to improve sound clarity.</p>

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			<p>Below is a list of statements and questions that if read at the beginning of the session, will make things go more smoothly. Begin by allowing the interpreter and the LEP person to greet each other in their language to establish that the language or dialect is a correct match. Next, read each statement, making sure to pause after each one so that the interpreter may interpret.</p> <ol style="list-style-type: none">1. We are going to communicate through an interpreter who will be interpreting by telephone/video.2. The interpreter will interpret everything you say into English and everything I [we] say into _____ (client's language).3. The interpreter cannot participate in the conversation. The interpreter's only job is to interpret what each of us says.4. If you do not understand something, ask me, not the interpreter. Please talk directly to me, not to the interpreter.5. If you have a long question or a long answer, please pause frequently so that the interpreter can interpret everything accurately.6. Please speak loudly and pronounce your words clearly so that we can hear you easily.7. It may take longer to say everything you need to say through an interpreter. Please say everything you need to say.8. If you have any difficulty hearing the interpreter or understanding something during this conversation, please tell me.9. [To the] interpreter, are you ready to proceed? Are you hearing and understanding everyone adequately? <p>G. Allow for private breakout rooms with access to interpreting when needed</p>	

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			<p>On page 10 at #2, the VRI Guidelines state, “Technology used to support virtual courtroom sessions must include some sort of breakout room or conference call functionality to provide for private conversations.” Each county should be required to provide their workarounds, if they lack breakout room capacity. Private conversations may be required for attorneys to confer with their clients and also where the court may instruct parties to meet and confer. For litigants with LEP, interpreters must also be permitted to be present in those private rooms. The role of an interpreter for such meetings has been an important function of many hearings, especially in the eviction context. Historically, prior to the public health crisis, in eviction hearings, the judicial officer provided a general announcement at the beginning explaining the process and what to expect, and ordered parties to go to the hallway to share evidence and attempt settlement. LACC’s user guide currently states that interpreters cannot be provided for private rooms. If parties are placed in private rooms for this purpose or other settlement related proceedings, a court-assigned interpreter must be provided for self-represented litigants.</p> <p>H. Ensure that litigants with LEP are permitted to present evidence and are provided with a clear understanding of what occurred in the hearing, including sight translation of all court orders</p> <p>The VRI Guidelines should provide clear, user-friendly methods and directives in providing sight translation of orders and other documents, as mentioned on page 9, #4, “Visual/Auditory Issues, Confidentiality, and Modes of Interpreting”, as well as presenting evidence (#5). Sight translation of documents and</p>	

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			<p>orders, which is part of the CA Courts Language Access Plan, is another function of an interpreter that presents challenges in a remote setting. Pre-pandemic, interpreters often read the court's orders and documents resulting from a hearing to litigants to ensure the litigants understood their contents and instructions. Courts should remind interpreters to do this at the outset of a hearing as interpreters may hang up or move on to the next matter without staying on for this important step.</p> <p>In some counties, courts are asking litigants to submit copies of hard evidence in advance of remote proceedings, particularly where screen-sharing is not an option. But in the absence of instructions or guidance on this, even in English, both of these approaches amount to insurmountable barriers for linguistically marginalized litigants. Advocates, organizers, and self-help staff can help bridge some of the information, technology, and language gaps for litigants appearing remotely, but in practice and for the vast majority of self-represented litigants, this will almost always leave in-person appearances as the sole option.</p> <p>I. Create mechanisms to monitor the quality of remote interpreting</p> <p>We are also concerned with the ability to monitor the quality of interpreting that occurs during VRI. In open court, we are able to observe the interpreting that takes place and can raise issues as they occur. In hearings with VRI, there are scenarios where only the litigant can hear the interpreter, and issues involving miscommunication may never be discovered. The VRI Guidelines should be a method of allowing others to patch into the interpreter's channel and also recording it for examination,</p>	

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			<p>in the event a transcript is needed. [FN15]</p> <p>VII. Courts must strengthen protocols for hybrid remote-on-site events with VRI</p> <p>This section in the VRI Guidelines labeled, “Appendix A - Minimum Specifications for Remote Interpreting,” is too generic and vague, failing to provide staff and judges a clear understanding of what hardware and software is needed. This section should identify specific platforms available in the state with details about functionality and performance. There are many other aspects of details and specifications to consider.</p> <p><i>15 See, e.g., Washington Court GR 11.3, at https://www.courts.wa.gov/court_rules/pdf/GR/GA_GR_11_03_00.pdf (audio recordings of interpreting conducted in hearings).</i></p> <p>For example, the remote interpreter’s audio voice quality can significantly improve if the interpreter uses a quality stand alone microphone that is not the computer microphone or an earbud microphone. [FN16] Further, it should be recommended that all participants, if possible, should use a quality headset with an external microphone, not just interpreters. Also, an interpreter appearing remotely should have their computer connected to the internet through an ethernet cable, rather than WiFi, to ensure a consistent connection. More of these specific detailed examples should be provided in this section and throughout VRI Guidelines.</p> <p>Additionally, this section must take into account scenarios where there are multiple court users with LEP, one in-person, one remote, as well as other scenarios where multiple and/or</p>	

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			<p>relay interpreters may be needed. We have had numerous instances where the same interpreter was interpreting for both parties, where one was remote and one was in-person.</p> <p>Additionally, the VRI Guidelines should reference safety protocols and equipment for certain in-person scenarios. Tragically, interpreters have already passed away after contracting COVID-19 as part of their court duties. [FN17] We have been told that safety protocols are in place and that each interpreter has been provided the proper equipment, including transponders with multi-party headset capacity for social distancing. Despite this, we have still observed interpreters standing or sitting very close to litigants without equipment, sometimes interpreting for two individuals at one time, which is not the best practice. In one case, a provisionally licensed interpreter appeared in-person, but did not have a headset. Therefore, he had to interpret for the litigant without being able to abide by social distancing rules. It is unclear if extra microphones/headsets are available for provisionally licensed interpreters. For languages that are not as common and provisionally licensed interpreters need to be utilized, the court should have headsets available for their use, especially during the pandemic, and should follow CDC standards for disinfecting the equipment in between users. For example, in Riverside County, an extra pair of microphones/headsets were made available to a provisionally licensed interpreter. As stated above, the VRI Guidelines should provide details of issues that have arisen in various courts with possible solutions to reduce negative impact and best practices to address them.</p> <p>VIII. VRI Proceedings Should Be Expanded to Other</p>	

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			<p>Court Events</p> <p>With many other court events adapting to remote service delivery, courts should take proactive steps to make VRI available to other court programs, such as mediation, evaluations, self-help, family law facilitator, and pro per workshops. We understand that the technology issues will continue to present barriers, but with proper notice, outreach, and partnerships with nonprofit organizations and other public entities, providing interpreting for these services and events through a video format will prove to be much more effective and meaningful.</p> <p><i>16 See, e.g., Equipment recommendations for Video Remote Interpreting/Remote Simultaneous Interpreting (VRI/RSI), Tamber Hilton, Federally Certified Court Interpreter, at: https://static1.squarespace.com/static/5cd20252b10f253ba21f5eee/t/5ee23f1aa97a040cf70cf7e8/1591885594634/VRI_RSI+equipment+two-pager+May+2020.pdf.</i></p> <p><i>17 Los Angeles Times, February 5, 2021, Workers in L.A.'s courts are dying of COVID-19 as in-person hearings, trials continue, by Matt Hamilton (https://www.latimes.com/california/story/2021-02-05/covid-complicates-in-person-trials-la-courthouses).</i></p> <p>IX. Conclusion</p> <p>These extraordinary times have required courts, attorneys, and litigants to adopt and adapt to new technologies and rapid changes across brief windows. While the global pandemic has forced society into virtual spaces, the commitment to make those spaces equitable and accessible to low-income, linguistically marginalized, and self-represented litigants has been lacking. Now more than ever, people look to systems like the court to</p>	

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			<p>deliver justice with dignity, respect and fairness, and to provide equity and due process in the eye of the receiver. These VRI Guidelines, if strengthened, can play a tremendous role in delivering access to many communities that have been left behind.</p> <p>Attendant to new technologies and remote options is the resultant bias that flows against the interests of self-represented and marginalized litigants. Understandably, frustrations and stress run high on all sides, particularly because we are adapting to new technologies against a background of a deadly pandemic. However, our client communities, who already start from a position of vulnerability, have the most daunting challenge. They face the bias that results from court frustrations over poor technology and glitchy connections, from children in the courtroom, delays associated with requesting interpreters, prolonged hearings due to consecutive interpreting, video backgrounds that are revealing of the litigant's poverty, and from the predictable confusion and chaos that result when self-represented litigants try to adjust their court filings and participation with policies and rules that did not include them or help inform their involvement in the court process. These concerns exacerbate the incredible stress that impoverished and linguistically marginalized litigants already face in their daily lives. Achieving equity in the justice system is one of those problems whose sheer enormity leaves it constantly in the shadows. To acknowledge the gaping chasm would be to take on an obligation that officials may understandably see as insurmountable. But that is where the courts and others can take a lesson from our clients – we must demonstrate a commitment to daunting challenges and draw from the courage of those</p>	

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			<p>whose experiences are far more overwhelming and intimidating than the task we face. The lack of language access leads people to be so completely shut out that their travails almost always go unseen by the justice system. The cause of their suffering is also the cause of its invisibility. Even within the confines of limited court resources, there are concrete and ameliorative steps courts can take and affirmative outreach they can do through these VRI Guidelines and in collaboration with others in the community to set a productive and committed path for equal access.</p> <p>Our hope is that the courts will put forth necessary measures to ensure true and meaningful access for all during these unprecedented times. Appropriate and consistently followed VRI policies, protocols, and safeguards must be put in place to ensure equal access at all points. With the ongoing public health crisis and heightened struggle for racial equity, we call upon the courts to be a beacon of hope and a leader in creating just and equitable access for the historically marginalized and disenfranchised communities we serve. To act otherwise will further deepen the devastating and disparate impact on BIPOC communities, as we continue to confront barriers to achieving racial justice. The Judicial Council must do and demand more to ensure that all our diverse communities seeking to utilize the courts have access to justice.</p>	
11.	National Association of Judiciary Interpreters and Translators (NAJIT) by Board of Directors	NI	The Recommended Guidelines and Minimum Specification for Video Remote Interpreting (VRI) for Spoken Language Interpreted Events [Proposed Guidelines], provides informational background, stating that the goal of the Language Access Plan [LAP] is to increase qualified interpreter services, as well as the availability of language access services. This	The committee thanks the commenter for their comment.

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			<p>statement overlooks the fact that highly qualified certified interpreters and those providing services in languages of lesser diffusion may no longer be available to the courts because the Judicial Council has not updated interpreter compensation rates in over 15 years. The rates currently paid by the courts have not kept up with annual increases in the cost of living. As a result, independent interpreters are left with few options other than to travel long distances as a way of supplementing the low fees paid by the courts.</p> <p>The court's initiative to save money by using remote interpreting and thereby eliminating travel costs for interpreters fails to address the real issue, of the low fees interpreters are being paid at this time. The effect of further reducing interpreters' income will be to have fewer interpreters available to the courts. This is the opposite of what the Recommended Guidelines and Minimum Specifications for Video Remote Interpreting intend to accomplish.</p> <p>The Proposed Guidelines state that VRI will increase access to qualified (certified and registered) interpreters. Under California law, interpreters who provide services to the state's courts must be located or reside in California. Therefore, the argument that more interpreters will be available is not a factual statement. As a matter of fact, many interpreters of languages of lesser diffusion are finding it harder to remain available to the courts due to a shortage of cases and reduced compensation.</p> <p>It is worth noting that remote interpreting is more difficult than interpreting in person, as it requires a higher degree of concentration; interpreters must deal with technological and</p>	<p>The committee appreciates the feedback, but interpreter pay rate is outside the scope of the guidelines.</p>

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			<p>cognitive challenges that are unique to remote interpreting. Additionally, it also requires a greater financial investment on the part of the contract interpreter, who needs proper equipment and connectivity to provide these services remotely. It is unconscionable for the courts to place the financial onus on the interpreter. In short, remote interpreting is a premium service, not a discount service, and should be compensated as such.</p> <p>In terms of the Fiscal and Operational Impacts, any standardization of VRI efforts must also take into account international ISO standards regarding the sound quality needed for remote interpreting r so as to protect interpreters from the effects of acoustic shock, as well as to maintain the requisite clarity of sound throughout every proceeding.</p> <p>Paragraph 3 mentions the need for the interpreter to hear all parties but neglects to mention the quality of the audio input. There is equipment, such as external microphones and headsets with acoustic shock protection that are necessary to protect interpreters from suffering hearing damage or hearing loss. All court personnel involved in proceedings using VRI should have an ethernet computer cable connection rather than using Wi-Fi. They should also have external microphones, and not use the computer's integrated microphone. Sound quality is critical for VRI to be effective, and the microphones generally found in computers are not sufficient to provide interpreters with clear audio in order to interpret fully and accurately. Poor audio quality and sudden spikes in audio can cause lasting damage to interpreters. Additionally, sound that comes from holding facilities is even more problematic as connections over the phone have poor audio quality as well as the added concern of</p>	

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			<p>constant background noise and echo that distort sound. When sound quality is not clear, interpreters inevitably have to turn the volume up, which puts them at greater risk of hearing damage.</p> <p>Page 8 of the guidelines, number one addresses the need to interrupt or clarify. Experience during the pandemic has shown that in hybrid environments, even with consecutive interpretation, if the parties are not all in the same virtual space (regardless of their physical location) and the interpreter is not on camera, there is little opportunity for the interpreter to interject or request that any of the parties pause to allow for interpretation. This is compounded by connectivity issues suffered by the judge or attorneys and these interjections by the interpreter are not seen or heard.</p> <p>Page 8, paragraph 2 refers to lag time for interpreting and relay interpreting. It should be noted that none of the platforms in use by the courts at this time allow for simultaneous relay interpreting. Simultaneous relay interpreting is only available if interpreters have additional technology and training at their disposal or are physically at the same location. It is not always feasible to expect the interpreters to bear the burden of using additional technology rather than travel to one central location. Relay interpreting in the consecutive mode also requires that the LEP and all interpreters be visible to the court in order to signal if something is not working appropriately.</p> <p>Paragraph 3 mentions the need of the interpreter to hear all of the parties but neglects to mention the quality of the audio input. External microphones and headsets with acoustic shock protection are necessary to protect the interpreters from hearing</p>	

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			<p>damage or hearing loss.</p> <p>Paragraph 4 mentions that telephonic interpreting is less desirable than video conferencing. We concur. Telephonic Interpreting can be very confusing to the LEP listeners, who cannot distinguish the voices of the source language (SL) speakers since all they can hear is the voice of the interpreter. For telephonic Interpreting, interpreters must often identify the speakers, which is an added cognitive task that is very difficult to perform at high rates of speech.</p> <p>Paragraph 5 mentions sight translation. Measures should always be taken by the courts to prevent interpreters from being alone with defendants or witnesses. This applies to breakout rooms as well. When sight translating documents, the party's attorney should always be present with the interpreter and the client.</p> <p>Paragraph 6 states that the same rules for using qualified interpreters apply to assignments using VRI. This should also include the requirement to seek out and contract with interpreters locally, who live and work within the State of California.</p> <p>Paragraph 7 refers to Data Collection, with Part C referring to Budget Change Proposals. As stated before, remote interpreting is more demanding and stressful than in-person interpreting. It also requires a substantial investment in equipment, long term contracts for high speed internet, and a dedicated space suitable for remote work. We must emphasize, for all these reasons, that VRI or remote interpreting is not a discount service but actually a premium service that must be compensated as such. The per-</p>	

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			<p>diem rate for remote interpreting should not be reduced, but, quite the contrary, it should be increased, particularly given the fact that the California Judicial Council per diem fees have not increased in more than 15 years. Any cost saving brought about by VRI should not be at the expense of those providing this premium service to the courts.</p> <p>Visual/Auditory Issues –</p> <p>1. Cameras focused on all stakeholders are essential both for the benefit of the LEP and the Interpreter, to allow everyone to identify who is speaking and read all visual cues. The interpreter and LEP need to be in view of all parties so that the interpreter or LEP can alert the court should any technological, terminological, or logistic issue arise.</p> <p>2. Speakerphones are never an appropriate solution for any type of interpreted proceeding and are certainly not appropriate for simultaneous interpreting due to their very poor sound quality and logistical unsuitability for interpreted events.</p> <p>3. The devices mentioned in paragraph 2, tablets and smartphones, should be emergency solutions only and not part of any permanent remote interpreting solution to be implemented by the courts. Wi-fi connectivity on tablets and smartphones can be unstable. Additionally, the smaller screen on these devices does not allow the parties to see all participants at one time, placing the interpreter and everyone else at risk of missing important information. The proper equipment for remote interpreting is a computer with an external microphone and hard-wired ethernet connection.</p>	<p>The suggested equipment for the interpreter or courtroom will be incorporated into education and best practice materials.</p>

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			<p>4. It is not enough to ask participants to speak clearly and in short sentences. The interpreter must have access to visual clues and the leeway to ask for pauses and repetitions when needed. 5. We must emphasize that built-in microphones--microphones integrated to the computer's hardware--are not a permanent solution for remote interpreting. Just as courtrooms have dedicated microphones, participants who connect on a video conferencing platform must have high quality microphones. The difference between "fifteen" and "fifty", "can" or "can't", for example, can be easily obscured by bad audio.</p> <p>Appendix A mentions providing LEPs with a phone number to call in order to participate in court proceedings. The use of a telephone for interpreted proceedings should be limited to very brief matters only. Trying to allow simultaneous interpretation over a phone with no visual cues puts the burden on the interpreter to identify all speakers or juggle multiple devices which negatively affects the interpreter's focus on the actual interpreting of proceedings. The suggested scenarios for hybrid situations also demand that attention be given to details, such as the interference a courtroom's PA system may cause to a participant's device also located in the courtroom. The best practice is for participants' devices to be hard-wired (ethernet-connected) computers with an external headset and integrated noise-cancelling microphone. The interpreter should be visible to the court and the LEP, and the LEP should be visible to the interpreter. The best solution in hybrid situations is to have all parties connected to the same digital platform so that everyone is in the same digital space.</p>	

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			Remote interpreting is undeniably playing a critical role in providing LEPs with language access to the judicial system during the pandemic and should be used with a clear understanding of the technology and working conditions that must be in place for interpreters to provide services that approximate the quality of interpreting services rendered in person. This cannot be accomplished without making investments in both the technology needed and the professional interpreters who provide the vital link between the court and the people of limited English proficiency it must serve.	In addition to development of these recommended VRI guidelines for spoken language, the Judicial Council is also working with the National Center for State Courts to develop VRI training modules for courts and interpreters to support VRI and these guidelines. This training will be developed with and presented by experts including court interpreters. Best practice material for VRI events will also be periodically updated.
12.	Carol Palacio Court Certified Spanish Language Interpreter San Mateo County Superior Court Current CIAP Voting Member	N	While I am in agreement that VRI has the potential to become a viable option for expanding language access in the courts, I feel that it is premature to establish a statewide VRI program. The premise justifying the changes in standards being that the courts have successfully used VRI to provide remote interpreter services for hearings during the pandemic is not accurate. While many short, non-complex VRI court hearings have been carried out with reasonable success, I have experienced significant problems even in brief hearings, and have observed how current set ups and technologies used during the pandemic negatively impact interpretation and restrict access and participation by parties using interpreters and their attorneys. Attempts to conduct longer, more complex hearings remotely have not been successful in my experience. The wide-spread problems with these processes have been tolerated because we are in a pandemic and there is simply not another option, but they should not be considered acceptable, tolerable or even successful during regular times. I personally have observed many instances in which LEP court users' rights have been suspended or	The committee thanks the commenter for their comment. The recommended minimum technology specifications are designed to allow flexibility for courts and to allow for future advances in technology.

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			<p>violated as a result of using the current technology we have available to us. Here are just a few examples:</p> <p>A Preliminary Hearing in which some parties were largely inaudible. As a remote interpreter I had to repeatedly interrupt the proceeding in order to request the defense attorney repeat her questions, I finally had to resort to calling the clerk's phone in order to ask for repetitions because, in addition to not being able to hear the attorneys, the courtroom could not hear me because the simultaneous function disabled my ability to communicate with the courtroom directly. I also had no way to know if there were additional things being said that I was missing, due to the inability to fully hear the proceeding.</p> <p>During a Small Claims Mediation, toggling into a breakout room disabled the simultaneous interpretation function such that I had to log out and log back in in order to be heard by the litigant. We ultimately decided to go back to the main room because the litigant couldn't hear the interpreter. We finally had to abandon the simultaneous mode altogether because the function remained disabled when we toggled back to the main room. The mediation was delayed significantly due to the struggle with technology and the use of consecutive interpretation. Because of this, the parties, although close to reaching an agreement, were prematurely cut off and the case remained unresolved and scheduled for trial.</p> <p>During a family law hearing, the simultaneous function stopped working, so THE COURT waived the litigant's right to an interpreter. Consecutive interpreting was going to slow the process down too much. The Court stated that they were talking</p>	

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			<p>about legal matters and the litigant wasn't going to understand anyway. I interpreted to the litigant that the Court had waived her right to an interpreter and that she should consult with her attorney after the hearing to find out what happened. I could hear the surprise and frustration in her voice upon hearing this from me.</p> <p>In a telephonic pretrial conference between an attorney and her client situated in jail, the attorney instructed me to do a partial reading of the plea form, not advising her client of significant portions of the form. I told her I couldn't do so, due to interpreter ethics. I was subsequently replaced by a different interpreter who signed off on the form. I'm not sure if it was subsequently fully translated. The defendant, being present over the phone, had no way to know if it was a partial translation. Neither did the Court because a different remote interpreter interpreted the plea. This could happen even without VRI, however, remoteness facilitates these types of interactions. Due to COVID, attorneys in our court have been allowed to sign off on forms for their clients, another anomaly that puts in jeopardy the rights of LEP court users.</p> <p>These are just a few demonstrative examples of what I have been experiencing during COVID. There have been many other occasions in which parties are difficult to hear, or communications break down due to software or hardware issues. Many times, attorneys have been unable to have private conversations with their clients due to limited hardware and technology. Although I personally have been grateful for the ability to interpret from the safety of my home during the pandemic, I believe that there should not be a rush to make VRI</p>	

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			<p>a statewide program without systems in place that actually work in a much more reliable fashion. Certainly, the ad hoc “solutions” that have been used due to the health emergency cannot be considered successful and absolutely should not be adopted as long-term strategies for providing access to justice. Even much more sophisticated systems present challenges and impact the participation of remote court users and create impediments for accurate interpreting. The solutions offered in Appendix A have not been successfully put into practice currently and some of the solutions offered are simply too vague, especially with regard to how confidential conversations would take place between attorneys and their clients. What we have seen in practice is that fewer confidential conversations, both brief and more in depth, are taking place because the technological hurdles are too great and many participants lack time and patience to allow for them to take place.</p> <p>As to the issue of confidentiality; I don’t see a way to guarantee this when there are remote appearances. It is very difficult to determine, even with cameras, if there are persons in remote locations that are present and listening to or even recording proceedings. Although the Court may order that certain parties not be present or record, it is hard to know if orders are actually being complied with.</p> <p>I do appreciate the inclusion of point number 12. “The use of in-person, certified and registered court interpreters is preferred...” however I don’t see it being put into practice during COVID. I foresee a real danger in extending COVID procedures into normal times. The temptation to choose “Cost Savings” over LEP Court Users’ rights is significant. The savings in labor may</p>	<p>Language has been added to the guidelines to more clearly recommend that courts work with attorneys to ensure that VRI solutions allow for privileged communications before, during, and after hearings.</p>

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			outweigh the cost of technology in the long run but the capabilities of technology, in my experience, are simply not there yet.	
13.	Superior Court of California, County of Orange by Sean E. Lillywhite, Administrative Analyst/Officer, Training & Analyst Group (TAG)	AM	<p>In addition to comments on the proposed policy concepts as a whole, ITAC is interested in comments on the following:</p> <ul style="list-style-type: none"> Does the proposal appropriately address the stated purpose? Yes, it appears that the changes do adequately address the purpose as stated. Would the proposal provide cost savings? If so, please quantify. Other than more efficient use of interpreter time as it relates to travel, it does not appear that there will be cost savings associated with this proposal. Especially, as this efficiency might be offset by the challenges posed by the use of video technology. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Implementation requirements would be substantial, based on the recommended training approach, which involves providing materials and (in some cases training for) both internal and external parties. Training materials for staff would need to be created, and instructional videos for the public would need to be published. Due to the 	<p>The committee thanks the commenter for their comment.</p> <p>In order to support the guidelines, the committee agrees that there will be a need to develop and make accessible the following: training, multilingual instructional material provided for court users, and the periodic review and updating of best practices.</p>

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			<p>quickly changing nature of technology, there will likely be a need to continually refresh the materials and update the training.</p> <ul style="list-style-type: none"> How well would this proposal work in courts of different sizes? It does not appear that Court size is the main factor, but access to the necessary technology might pose an issue for courts that may not have the resources to support the process. The consistent guidelines will help all courts equally in understanding and implementing best practices as it relates to Video Remote Interpreting. All courts will need to redirect resources to implement the training sessions and reference materials for all parties. 	
14.	Superior Court of California, County of Riverside by Vanessa Lopez Division Manager- Interpreter Services	NI	<p>Fiscal and Operational Impacts: VRI services are regionally negotiated and governed by a Memorandum of Understanding (MOU) with the union(s). Depending on the language in the MOU, the payment of a stipend may be required for interpreters performing video remote interpreting. The MOU may also limit the types of matters where VRI may be used (short cause vs. long cause matters).</p> <p>The Court Interpreters Program (CIP) funding methodology is being reviewed and updated by the Trial Court Budget Advisory Committee / Funding Methodology Subcommittee to align program costs with the funding from the State. The CIP has been running a deficit requiring funds to be programmed from the Trial Court Trust Fund (TCTF).</p>	The committee thanks the commenter for their comment.

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15.	<p>Superior Court of California, County of San Francisco</p> <p>by Staff Interpreters:</p> <p>Margo Seely</p> <p>Carla Cuevas</p> <p>Manti Henriquez</p> <p>Karina McMillan-Rea</p> <p>Elizabeth McCarthy</p> <p>Piedad Kretchmer-Blanco</p> <p>Aidong Ni</p> <p>Jean Garascia</p> <p>Cristina Visus</p> <p>Stephan Enoch</p> <p>Ted Kim</p> <p>Andrea Pollock</p> <p>Daniel Navarro</p> <p>Marissa Ayerdi</p> <p>Laura Villanueva</p> <p>Muriel Falak</p> <p>Marlon Vasquez</p> <p>Nina Safdie</p> <p>Shannon Raintree</p>	N	<p>This letter is being written in response to the Judicial Council's Invitation to Comment SP21-01 on behalf of court interpreters in San Francisco.</p> <p>We received information about proposed changes to the guidelines indirectly through the grapevine, so to speak, despite the fact that court interpreters are key stakeholders in the decisions that will be made about VRI.</p> <p>We maintain that despite the pandemic, this is an issue that needs to be addressed only after extensive feedback from interpreters and a much more careful consideration of technical limitations and impacts on effective communication. We object to changes around VRI being pushed through at this point, during a pandemic that has left all in the justice system with no option but to work under very difficult conditions.</p> <p>Almost a year into the pandemic, interpreters have been on the front lines of the informal rollout of limited VRI in response to emergency orders and court shutdowns. We now have a lot of experience with using it, how it affects proceedings and language access, and based on our direct experiences, we question the basic premise upon which the changes are being proposed: that VRI has been used successfully during the pandemic to provide language access in court proceedings. We present our commentary below.</p> <p>VRI, despite the way it is talked about as being the be-all, end-all to reduce court costs and streamline judicial processes, is fraught with problems and often causes unnecessary delays and additional costs. In terms of practical use of VRI in day-to-day</p>	<p>The committee thanks the commenter for their comment, insight, and patience. The committee recognizes that interpreters have been required to learn quickly and adapt to technologies that allow VRI events, and that there is often frustration at times with software, sound, visual or communication issues. The VRI guidelines for spoken language recommend that VRI events should be terminated if they are not facilitating effective communication and matters rescheduled.</p>

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			<p>situations at court, we have seen myriad impediments to accurate interpreting and to access to justice. Because of these problems, interpreters appearing remotely have often been passed over for another interpreter who is available to appear in person. Judges have refused to work with the remote interpreter, instead requiring one be sent in person to handle witness testimony, pleas and attorney-client conferences, thus negating both the technology in place and the remote interpreter. This results in extra costs to the courts and money essentially gone to waste.</p> <p>For use with Indigenous languages, one of the main perks of VRI laid out by the JCC, many times the Indigenous language interpreter will require a relay into English from the Spanish. When done remotely, this means that parties will have to wait for 2 separate interpreters to consecutively interpret in both directions English -> Spanish -> Indigenous language and then back again. This consumes undue amounts of time and will frustrate if not completely impede attempts at accuracy. Again, not necessarily less expensive and not less time-consuming.</p> <p>There has been virtually no training for interpreters or others using remote platforms. People are basically winging it. Since there is no one VRI platform for each court in each county, the technology and training required is vastly different depending on where you are. Attempting to establish training around VRI would mean that the courts and court staff need to all be using the same technology. Everyone from Judges, to clerks, PDs to DAs, Bailiffs, Jail Staff, Interpreters and litigants(?) will need training. Each tech system would have to have its own set of rules and trainings, best practices and trouble-shooting. Right</p>	<p>The Judicial Council is working with the National Center for State Courts to develop VRI training modules for courts and interpreters across standard platforms to support VRI and these guidelines. This training will be developed with and presented by experts including court interpreters. Best practice material for VRI events will also be periodically updated.</p>

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			<p>now in San Francisco, for example, the system in place at the Hall of Justice differs from that at Civic Center and the Juvenile Justice Center, and we are just one small county.</p> <p>It appears that the proposed guideline changes would perpetuate this ad hoc system with different platforms being used and a disparate array of technical set ups and ways to connect. We hope those considering the issues will hear loud and clear that these systems have not worked very well at all and the approach is antithetical to the idea that people will be trained and consistent protocols and technical guidance will be followed.</p> <p>Additionally,</p> <ol style="list-style-type: none">1. VRI negatively impacts language access by disenfranchising the LEP during legal proceedings. <ol style="list-style-type: none">a. Adequate technology does not exist to allow LEPs to actively participate in their legal proceedings because they are not able to comment or to ask questions during the same; they are effectively isolated from the proceedings.b. Connectivity issues, poor quality video and audio (breaks in audio/video) create confusion for all parties, but especially interpreters (and by extension LEPs) who rely on clear and understandable audio/video to be able to adequately hear, see and understand in order to interpret accurately;c. Visual cues are important but often unavailable in the ad hoc set ups. Interpreters are often unable to see the courtroom or the parties who are speaking, leading to less accuracy and more interruptions.d. The process of interrupting to request a repetition is onerous, disruptive and cumbersome.	

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			<p>2. VRI places an extra burden on the Interpreter</p> <p>a. Interpreters are often working alone for long periods on a platform that is even more mentally taxing than having to interpret in person;</p> <p>b. Interpreters are being asked to handle tech that we haven't been trained for, which adds an extra load to the cognitive strain already present when interpreting;</p> <p>c. Many interpreters have had to use their own phones or computers in a patchwork system which disenfranchises the LEP (see above) and places an extra burden on the interpreter.</p> <p>3. VRI places an extra burden on the LEP parties and makes it even more difficult for LEP parties to understand and participate.</p> <p>a. Whether due to limitations on devices, access to the internet or general know-how, LEPs are at a disadvantage when appearing remotely due to some of the reasons stated above.</p> <p>b. Often LEP parties are unable to connect by video and only have audio access. In such situations, interpreters are regularly instructed to mute themselves on the courtroom feed and interpret court proceedings simultaneously over a separate phone line for the LEP party. These hybrid setups in effect gravely undercut meaningful language access. With no visual cues to rely on, the LEP party is forced to glean from the interpreter's uninterrupted verbal stream the meaning and import of what multiple, unseen and unidentified speakers are putting on the record in their matter.</p> <p>c. In custody defendants have restricted mobility and often do</p>	

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			not have a microphone, or their microphone is muted, making it impossible for them to actually participate.	
16.	Superior Court of California, County of San Joaquin by Jacob Montez, Court Operations Manager Jury Services, Interpreters, Court Reporters, ADA Coordinator	A	<ul style="list-style-type: none"> Does the proposal appropriately address the stated purpose? <p>It is our Court's opinion that the updated Guidelines and Minimum Specifications for Video Remote Interpreting (VRI) does adequately address the stated purpose.</p> <p>The Covid-19 Pandemic brought various unforeseen challenges that drastically altered court operations. Courtroom procedures and proceedings were forced to adjust to the social distancing restrictions and in many cases moved to telephonic and virtual appearance by parties in court proceedings. Our Court implemented a mixture of both telephone and virtual hearings based on the Court's operational need. Though intended for LEP users of the Court, these updated guidelines provide the perfect framework for meaningful, high quality virtual court proceedings while aiding in the efforts to protect the health and safety of all participants.</p> <ul style="list-style-type: none"> Would the proposal provide cost savings? If so, please quantify. <p>Initially the implementation of VRI would not be a cost savings in that the procurement of the appropriate equipment for VRI would be an added cost to the Court's budget. If equipment costs were provided by way of grant funding, the Court would then be able to realize the cost saving differences with having a remote hearing versus in person appearances by interpreters which require payment of travel time and mileage. VRI would also aid the court in increasing its pool of available interpreters which</p>	The committee thanks the commenter for their comment. The goal of the revised guidelines is to provide general guidance including key considerations and recommended minimum technology specifications for VRI for spoken language events, and to be adaptable and helpful for courts of all sizes.

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			<p>would lead to more competitive negotiations of contract interpreter rates.</p> <ul style="list-style-type: none">• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? <p>Implementation Requirements as follows:</p> <ol style="list-style-type: none">1. Development of procedures regarding use of the equipment, an online tutorial for interpreters appearing virtually, bench guide for judicial officers. 16 hours IT Department Manager IT Supervisor Court Operations Manager Interpreter Office Coordinator2. Training staff 1 or 2 hours Judicial Officers IT staff members Interpreters Interpreter Office Coordinator Courtroom Clerks3. Modification to court docket codes. 1 hour IT staff member Courtroom Operations supervisor	

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			<ul style="list-style-type: none">• How well would this proposal work in courts of different sizes? <p>Implementation of the VRI process would benefit courts of all sizes. In smaller courts, interpreter services are primarily provided by contract interpreters as most only employ a small group of interpreters. Cost of equipment aside, these smaller courts would see cost savings in not having to pay for interpreter travel time, mileage and lodging. They would also be able to increase their pool of available interpreters that might not have otherwise been willing to travel to many of these remote locations. An increased pool of available interpreters would also aid court's in negotiating more reasonable rates and modifying the current practice of a full or half day rate to an hourly rate. In a medium size courts as with smaller court, VRI would also provide the cost savings in eliminating the travel time and mileage, increased pool of available interpreters and aid in negotiating reasonable rates. It would also allow courts of a medium size to more efficiently utilize interpreter resources by conducting VRI from one court location to another branch court location.</p> <p>Larger sized courts would benefit from cost savings in negotiating more reasonable rates, moving to an hourly rate, and having an increased pool of interpreters. Many of the larger sized courts also have court branches in remote locations that require travel time and mileage. Using VRI when appropriate would help to eliminate those costs.</p>	

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