

February 23, 2021

To: Joint Hearing Assembly Judiciary And Senate Judiciary Committees
ASSEMBLY MEMBER STONE, SENATOR UMBERG, Chairs

From: Mary Lou Aranguren, Certified Court Interpreter

Re: Public Comment for February 23 hearing on COVID and the Courts: Assessing the
Impact on Access to Justice, Identifying Best Practices, and Plotting the Path Forward

I am a certified court interpreter (Spanish/English) with 28 years of experience in the courts, currently a staff interpreter for the Alameda County Superior court.¹ My comments are based on direct experience interpreting during the pandemic in six Northern CA counties, as well as input from more than two-dozen staff interpreters working in Bay Area and Los Angeles courts.

Spoken-language interpreters working in criminal and civil court proceedings have risked their health and safety working in person during the pandemic. Many interpreters believe the deaths of three of our colleagues in Los Angeles were preventable. In our experience, the Los Angeles Superior Court, and many other courts, have not enforced CDC guidelines and their own safety measures, and have not taken interpreter safety seriously enough.

Remote appearances generally, as well as remote interpreting, have been necessary to maintain essential services while protecting the health and safety of all participants and the public during this public health crisis. We have made our best efforts to provide language access while working remotely, adapting our work to Internet platforms designed for video meetings.

Remote hearings present serious problems, however, for delivery of language access. It's important for lawmakers to know that systems currently being used are seriously flawed and incompatible with the goal of providing fair and equal access to all court users.

The ad hoc technical setups used during the pandemic when some or all parties appear remotely over meeting platforms like Zoom, BlueJeans, and WebEx impede the ability of limited-English proficient (LEP) parties to participate meaningfully in their own cases. These systems are not designed for remote simultaneous interpretation. They do not provide the required audio quality and as a result, working over Internet meeting platforms risks damage to interpreters' hearing.

As described in more detail below, systems being used during the pandemic can only be considered stop-gap emergency solutions and have no place in a post-pandemic courtroom. Yet the Judicial Council's Information Technology Advisory Committee is currently proposing changes to guidelines for Video Remote Interpreting (VRI) that would lower standards and perpetuate the ongoing use of these ad hoc, poor quality systems, without technical standards or protocols.

¹ Previously worked as legislative director and field representative for the California Federation of Interpreters (1998-2017) and served as CA Labor Federation's appointee to the State Bar's Access to Justice Commission and a Senate Rules Committee appointee to serve as a public member of the CA Commission on Judicial Performance (2011-2018).

Remote interpretation can play a role in expanding access to justice, particularly outside of court proceedings, however there must be clear, effective, and enforceable VRI policies and protocols, including much higher quality equipment and high-definition sound and video over stable connections. Even with excellent audio and video, the types of proceedings that can be conducted remotely, and effectively, is quite limited. Absent extraordinary circumstances, in-person interpreting must remain the preferred method, in accordance the Judicial Council's Language Access Plan and the American Bar Associations' Standards for Language Access.

Impacts on due process, civil liberties and access to justice

There have been 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.

A significant body of research in Europe supports the validity of our experience and observations. AVIDICUS 2 researchers 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 videoconference setting and the problems of hearing (and understanding) are aggravated."²

Interpreters report many problems with LEP participation and due process during the pandemic that result from these communication dynamics 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.

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:

- 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.
- Confidential attorney-client consultations are often impossible, and are much more limited and cumbersome when they occur.
- Testimony through video has been found to be less credible.³ (Harvard Law Review, 2009)
- Worse outcomes have been documented for detained immigrants when judges and defendants appear over video.⁴

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

³ Access to Courts and Videoconferencing in Immigration Courts, Harvard Law Review, 2009, Vol. 122:1151 page 1181-1191.

⁴ UCLA law professor Ingrid V. Eagly found that video hearings led to severely depressed engagement with the judicial process. "When compared to similarly situated detained televideo respondents, detained in-person respondents were a remarkable 90% more likely to apply for relief [and] 35% more likely to obtain counsel."

Impacts on accuracy and quality of interpretation

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.⁵

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:

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 video-mediated 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.”⁶

Distortions of meaning, for example, were twice as high when the interpreter was separated from all parties versus face-to-face interpretation. “By far the largest group of distortions are conceptual distortions of what was said, involving confusion of facts and distortions of the speaker’s intention.” The interpreters themselves tended not to notice such distortions, suggesting “that the interpreters worked very close to the limit of their mental capacities.”⁷ 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.

Technology: Sound, Connection Issues and Damage to Hearing

Quality of sound and video directly affects quality and accuracy of remote interpretation.

Sound quality over the platforms being used is poor and unreliable. Interpreters have experienced ongoing problems with audibility throughout the pandemic, including: interference, echo, distortion, bad microphones, choppy audio and video, sound lags and variable volume of different participants, among others.

These sound issues are due 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

⁵ 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

⁶ AVIDICUS3: http://epubs.surrey.ac.uk/303017/2/14_Braun_recommendations.pdf.

⁷ 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.

connection and equipment, the sound quality is lost in the link transmitting the speaker's voice through the Internet platform.

Dr. Christoph Stoll, a researcher and conference interpreter explains the fundamental problem is that sound quality is degraded by the 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)." ⁸

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.⁹ 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 Stoll, who has designed interpretation sound systems for conference settings.

In addition to working with extremely bad sound quality, interpreters report they have experienced and observed many other impediments to interpreter performance and to access to justice for LEP court users:

- Many LEP parties lack access to good connections or appropriate equipment.
- 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
- Lack of basic protocols to ensure parties and interpreters are connected.
- Lack of access to interpreter before, during and after hearings to provide continuity of service.
- Disorientation of LEP parties who cannot tell who is speaking, rendering the interpretation a stream of words in one voice without context that is necessary to comprehension.
- Lack of visual clues needed by interpreters to process information and interpret faithfully for LEP court users.
- Lack of protocols to control pace and turn taking during proceedings
- 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.

⁸ February 4, 2021, Mr. Stoll, Heidelberg University, speaking in a hearing of the Canadian House of Commons Standing Committee of Official Languages.

⁹ 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

Any cost-benefit analysis regarding the use of VRI as currently proposed must take into account the cost to interpreters' health and hearing. Remote interpreters are being subjected to hearing loss and damage, tinnitus and acoustic shock syndrome¹⁰ working remotely under current conditions. Hearing is a foundational requirement to work for spoken-language interpreters, and essential to our livelihood.

Modes of Interpretation

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.

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. But proceedings are slow and cumbersome and delay the processing of cases. Fragmentation caused by the need to pause frequently makes 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. This setup presents many problems for interpreters and LEP parties and is totally inadequate for regular use (non-emergency). Among the issues of this setup: Poor sound quality on the platform makes it difficult for the interpreter to hear the proceeding while speaking into the phone. 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 disruptive, and muting and unmuting different devices interferes with the focus needed to maintain accuracy and ensure complete interpretation.

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.

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.

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.

Mandatory standards for VRI and restrictions to ensure appropriate use

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.

The proposed VRI guidelines wending their way through Judicial Council committees removed the already inadequate 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.

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. There are standards for sound quality in simultaneous interpretation. ISO standards have been established to interpret reliably and safely and have been agreed upon by equipment manufacturers, sound engineers, audiologists and worldwide organizations.

In any cost-benefit analysis of VRI’s efficacy, judicial leaders and legislators must 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 limited value of these expenditures given the limited proceedings that can be conducted remotely, and the lesser quality of access, even assuming the best case scenario: high quality sound and video, and well-thought-out training and protocols.

Conclusion

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. The idea that meaningful access to justice can be achieved on the cheap and without standards and controls must be rejected. As noted by researchers studying the very challenges we’ve encountered using today’s technology in emergency mode:

“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 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.”¹¹

¹¹ Videoconference and Remote Interpreting in Criminal Proceedings, Sabine Braun and Judith L. Taylor Editors, July 2012 (AVIDICUS- Conclusions and Implications, Ann Corsellis, OBE).