

Position Statement on Video Remote Interpreting in Courts and Legal Settings

**developed by the National Association of the Deaf (NAD) with input from subject matter experts*

Published: 2022

In the United States, courts are meant to uphold the Rule of Law for all citizens and ensure that every person is treated equally under the law. This ideal, while not attained and perfected yet in the short history of this country, is one that our judicial system continues to strive for on a daily basis. The American Bar Association explains on its website that American courts “protect minorities of all types from the majority, and protect the rights of people who can't protect themselves. They also embody notions of equal treatment and fair play. The courts and the protections of the law are open to everybody.”¹

However, courts and legal settings typically involve extensive and complicated oral communications, which have traditionally been inaccessible to deaf, hard of hearing, and DeafBlind individuals as well as deaf individuals with additional disabilities.² In recent decades, disability rights laws have mandated that courts and legal settings provide communication access to deaf and hard of hearing individuals, usually through the provision of professionally trained qualified sign language interpreters and qualified professional captioning services.

Modern technology has made it possible for courts and legal settings to conduct proceedings, trials, depositions, interrogations, investigations, and other meetings or events through video conferencing platforms. The advent of such modern video technology in court and legal proceedings have impacted their accessibility, particularly in terms of communication access for deaf and hard of hearing individuals. Many courts and legal service providers³ are increasingly relying on Video Remote Interpreting (VRI) technology to bring in interpreting services on screen rather than into the courtroom or legal setting in various situations. Unfortunately, such courts and legal service providers do not always understand or recognize that VRI may not provide the effective communication for deaf and hard of hearing people to ensure that judicial and legal proceedings are fair, equitable, and compliant with federal laws.

Video remote interpreting (VRI) uses video conferencing technology, equipment, and a high-speed internet connection with sufficient bandwidth to connect an interpreter to a service provider to provide interpreting services. The NAD cautions courts, law enforcement agencies and other legal services providers to consider carefully how the use of VRI impacts communication access for deaf individuals. A number of courts have piloted VRI systems or are in the process of implementing such systems, and these pilots have demonstrated the disadvantages of relying on this new technology for access purposes.

The COVID-19 pandemic has led many courts and legal service providers to rely more on VRI for communication access purposes. While health precautions should always be considered, it is just as important that the communication access be effective. Relying on VRI solely for health considerations

¹ ABA website, “How Courts Work” (published Sept 19, 2019):

https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/court_role/

² For the remainder of this statement, the use of the terms “deaf” or “deaf and hard of hearing” are intended to encompass all deaf, hard-of-hearing, DeafBlind individuals, including those with additional disabilities except where specifically distinguished.

³ For purposes of word economy, the phrase “courts and legal service providers” means courts, legal service providers, private counsel, law enforcement agencies, or other entities who provide legal services or engage in law enforcement activities.

without regard for the effectiveness of the communication is improper and runs afoul of federal mandates. Moreover, the pandemic has led to many, including courts, to use off-the-shelf video conferencing platforms such as Zoom, Google Meet, Microsoft Teams, Cisco Webex, etc. Regardless of the form of video platform, the VRI standards proposed in this position statement should remain consistent to ensure full and equal participation with effective communication.

The National Association for the Deaf (NAD) is the nation's premier civil rights organization of, by and for deaf and hard of hearing individuals. The NAD partners with organizations, entities and state/local governments to ensure that systematic technological advances do not exclude, discriminate against, or marginalize deaf or hard of hearing individuals. The NAD authored *Court Access for Individuals Who Are Deaf and Hard of Hearing*, which provides guidance to courts on the provision of effective communication for deaf and hard of hearing participants in the courtroom.⁴ This position statement is intended to supplement the ABA publication with further guidance for courts and other legal service providers in adopting appropriate internal Video Remote Interpreting (VRI) policies to provide effective communication to the constituencies they serve.

Applicable Laws and Standards

State and local government agencies and services, including courts and law enforcement agencies, must comply with the provisions of Title II of the Americans with Disabilities Act (ADA).⁵ Private attorneys and legal service providers are defined as places of public accommodations and must comply with Title III of the ADA. The ADA requires that public entities and public accommodations provide appropriate auxiliary aids and services to qualified individuals with disabilities.⁶

For individuals who rely on sign language or sign system,⁷ the most effective accommodation often will be a qualified sign language interpreter. Pursuant to federal law, a "qualified interpreter" means "an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary."⁸ While both Title II and Title III of the ADA allow for entities to provide interpreters either in-person⁹ or through video remote interpreting systems,¹⁰ the resulting interpreting must be effective. Courts and legal service providers need to be mindful when selecting and hiring sign language interpreters that they are qualified to provide legal interpreting.¹¹

In essence, the public entity has discretion to determine how communication access is provided but is required to ensure that the communication is effective given the nature, length and complexity, and the

⁴ Found on the ABA website at: <https://www.americanbar.org/content/dam/aba/administrative/commission-disability-rights/court-access-guide-lr-intractv-accsb-rev022317.authcheckdam.pdf>

⁵ 42 U.S.C. § 12101, *et seq.*

⁶ 42 U.S.C. § 12103(1).

⁷ For purposes of word economy, the term "sign language" means any form of sign language including but not limited to: American Sign Language (ASL), Lengua de señas mexicana (LSM), Langue des signes du Québec (LSQ), or any other sign language used in the United States or other countries. For this position statement, the term "sign language" also encompasses "sign systems" which are not technically languages and include signed English systems, contact sign (a combination of ASL signs and English word order, formerly called Pidgin Sign English), and Internal Sign.

⁸ 28 C.F.R. § 35.104; 28 C.F.R. § 36.104; 29 U.S.C. § 794(d).

⁹ The terms "in-person" and "on-site" as they describe an interpreter are synonymous and interchangeable, and is to be contrasted from a video remote interpreter.

¹⁰ See 28 C.F.R. §35.160 and 28 C.F.R. § 36.303.

¹¹ See *infra*, Qualifications of VRI Interpreters, p. 6-8.

context of the interaction taking place.¹² According to Title II of the ADA, courts and law enforcement agencies must give primary consideration to the deaf person's choice of auxiliary aids or services.¹³ This mandate requires that the public entity must consult with the deaf person in need of communication access and consider any feedback in determining whether VRI is appropriate for any legal matter. This mandate is continuing in nature. If the deaf person initially agrees that VRI might be effective for communication, but then the deaf person realizes that it is not effective then that person may request a different form of communication access. At that point, the public entity has a responsibility to assess whether this communication is effective or not and what other options need to be pursued.

Courts also need to be aware that while VRI is allowed under the ADA and Rehabilitation Act, it is not appropriate to use Video Relay Services (VRS) or other forms of telecommunications relay systems (TRS) as a means of providing interpreting services in court proceedings. VRS/TRS was established through Title IV of the ADA as a means to provide deaf and hard of hearing individuals with access to telephone communications.¹⁴ Courts are able to contract for and thereby vet sign language interpreters retained to work in-person or through VRI to ensure that the interpreters have the necessarily qualifications including knowledge of the "necessary specialized vocabulary" for the legal proceedings. Such contracting and vetting is not possible with VRS or any form of relay service. Consequently, even when courts hold legal proceedings by phone or via video conferencing, courts should never use VRS or any form of telecommunications relay system as a means of communication access for deaf and hard of hearing participants. Relay systems are included in Title IV of the ADA to make it possible for deaf and hard of hearing to make telephone calls, but are not included in the definition of "qualified interpreters" under Title II of the ADA which applies to state and local courts.

Historical Use of VRI

Courts and legal service providers should take care to assess how VRI can be used in their systems through appropriate planning and policies, input from deaf stakeholders, and mandatory protocols. Lessons can be learned from the extensive use of VRI in medical settings over the last 15 years to communicate with deaf and hard of hearing patients. Many years ago, hospitals and doctor's offices began using VRI almost exclusively to provide interpreting services to deaf and hard of hearing patients and family members. Numerous members of the deaf and hard of hearing community reported significant technical issues with the VRI service leading to their compromised ability to understand their doctors and medical staff. The prevalent use of VRI in the medical field caused a great deal of distrust between deaf patients and their doctors, created heightened risks for the health of deaf patients, and increased legal liability and litigation for healthcare providers. Numerous federal complaints were filed by deaf people who felt forced to use VRI in healthcare settings.¹⁵ Some courts have already done pilots with VRI, and the results reflect some of the same issues experienced in health care settings.

California has the most well-known VRI pilot. In 2012, the Judicial Council of California issued Recommended Guidelines for VRI in ASL Interpreted Proceedings. The Guidelines recommended that,

¹² See 28 C.F.R. §35.160(b)(2).

¹³ *Id.*

¹⁴ 47 U.S.C. § 225.

¹⁵ See, e.g., Settlement Agreement between United States of America and Adventist Midwest Health (6/25/2018) available at <https://www.justice.gov/usao-ndil/press-release/file/1074966/download> (last accessed 8/31/2021); *Sunderland v. Bethesda Hospital*, No. 16-10980 (11th Cir. 2017); *Heisley and United States v. Inova Hospital System*, Case No. 1:10-cv-714-LMB/IDD, (E.D.Va. Mar. 30, 2011); *Gillespie v. Dimensions Health Corp.*, No. DKC-05-CV-73 (Consent Decree obtained by U.S. Dept of Justice on July 12, 2006) available at ada.gov/laurelco.htm (last accessed 8/31/2021).

prior to use in a court proceeding, the deaf participant should first consent to the use of VRI and that an individualized determination should be made as to the linguistic needs of the deaf person and the compatibility of VRI. Further, the Guidelines set forth that any party involved in the court proceeding can indicate that VRI is not working well enough to be considered effective and postpone the matter. The report contains helpful checklists for the interpreter and courtroom personnel in its appendices.¹⁶ In 2016, the pilot study was roundly criticized as being ineffective by the California Federation of Interpreters, a union representing staff interpreters in California.¹⁷ The union interviewed the pilot interpreters and found that many of the recommendations in the Guidelines were not followed when VRI was used in the courts. The report explained, among other things, that: VRI did not significantly increase access to qualified legal interpreters; VRI was used in settings in which the Judicial Council's report specifically indicated were inappropriate for VRI; training of judicial personnel was inadequate; and ongoing evaluation of the program was insufficient.

Other states' use of VRI tracks the problems that were reported in California. Many states' program guidelines raise similar questions about oversight, implementation, evaluation and stakeholder input regarding the use of VRI. For example, in Minnesota, guidance for courts is provided by a bench card.¹⁸ According to the Minnesota guidance, the bench card provides that the determination of whether VRI is effective rests with the judge in the matter.

Whether VRI is effective in any court proceeding is a determination that really requires feedback from the deaf participant and the interpreter, especially given that most judges are not familiar with ASL and the principles of effective sign language interpretation. Consequently, if VRI is being used in any court proceeding and there arises an objection of ineffectiveness from the interpreter or the deaf individual, then VRI use should be immediately discontinued. Despite such guidelines governing the monitored use of VRI in courtrooms, the input of the deaf participants and the interpreter are not always respected.

Best Practice Guidance for VRI Usage in Courts and Legal Settings

1. Appropriate Usage of VRI

Courts and legal settings should only permit VRI usage when it is clear that the deaf party involved is able to understand the interpreter and vice versa. Consent by the deaf party is strongly recommended prior to any usage of VRI. Even with such consent, the effectiveness of the communication must be monitored throughout, and deference on this point should be accorded to both the deaf party and the interpreter.

Courts and legal service providers tend to use VRI when the need to communicate is emergent or unplanned, and no interpreter can be obtained promptly for an in-person interpretation. Many emergent needs might present a low enough risk for VRI to be appropriate. Examples of such low risk situations might include when a deaf person needs counter assistance from a court clerk or from a self-help clinic for assistance from a volunteer attorney. However, the majority of legal settings are high risk, technical, and complex enough that an on-site interpreter should be provided.

¹⁶ Available at <https://www.courts.ca.gov/documents/CIP-ASL-VRI-Guidelines.pdf>.

¹⁷ Available at https://www.calinterpreters.org/assets/Backgrounders/CFIRreport_ASLVRI_F.pdf.

¹⁸ Minnesota Judicial Bench Card. Video Remote Interpreting in the Courtroom. SCAO-CIP May 2013. J.C. Policy 513; SCAO Policy and Procedures 513(b) (amended 3/1/13).

The VRI pilots in the California and Minnesota courts have led each set of state courts to publish their own general guidelines on when VRI should and should not be used in courts. These guidelines are compiled, adapted and provided here:¹⁹

Settings in which VRI might be appropriate:

- Deaf person(s) involved provides truly voluntary and complete consent without threat or pressure;
- Events in which a qualified interpreter is not available onsite;
- Events that are less than thirty minutes in duration and are not complex;
- Events with no testimony such as initial conferences, status conferences, scheduling conference and other non-evidentiary hearings;
- Events that are uncontested and require no testimony;
- Events that involve the use of standard American Sign Language (ASL) and do not require a specialist interpreter such as a Deaf Interpreter (sometimes referred to as Certified Deaf Interpreter, CDI) or other sign languages;
- Events of immediate nature and cannot be delayed, such as in-custody arraignment, changes in bail amounts, temporary restraining orders, or other events of a similar nature, provided that the party in question has shown to understand the circumstances and conditions within the event;
- Events where the deaf person is an audience member and not an active participant in the case;
- Non-courtroom events such as counter assistance or self-help clinics.

Settings in which VRI is not appropriate:

- Events where a qualified interpreter is readily available to come onsite;
- Events that are lengthy, complex, or involve testimony;
- Events which require the specialist services of a Certified Deaf Interpreter because the deaf party/person does not use standard ASL (cited from California document), is limited in their ability to view the video interpreter, or has limited mobility;
- Events where any party is mentally impaired;
- Events where the deaf party is a minor;
- Events where the communication is taking place in facilities that do not have robust Internet access.

This list can be used as a general guide for courts and legal service providers on when VRI usage is appropriate, but there are always other factors that may affect the evaluation of appropriateness.

2. Special Considerations for VRI Usage

A. Testing Prior to Proceeding

Prior to the event, the VRI equipment should be tested to ensure that the deaf party can see the interpreter clearly and vice versa. Further, the audio needs to be tested to ensure the interpreter can hear everyone clearly and can be heard clearly by everyone in the proceeding. Every person in the proceeding who will be speaking should have access to a microphone to ensure clear audio through the VRI.

The VRI interpreter(s) should also have an opportunity to engage with the deaf party prior to the start of any proceeding. Such a brief introductory discussion between the remote interpreter(s) and the deaf party allows them to determine linguistic compatibility as well as verify that the VRI equipment is functioning well enough for them to see each other clearly.

¹⁹ Compiled in part from the Minnesota bench card, supra note 16, and California policy guidance, supra note 14.

B. Specialized Courts and Proceedings

Some matters, by their very nature, are not conducive to a remote connection. Mental health court, drug court, juvenile court, and competency hearings are all examples of unusually complex interactions that are difficult to manage even when all parties are in the room. The use of VRI in such specialized courts and legal proceedings is not recommended.

C. Deaf with Other Disabilities or Using Other Sign Languages

Some deaf individuals will not be effectively accommodated through VRI. For individuals who are DeafBlind or who are deaf and have low vision, VRI is completely ineffective as those individuals are not able to see the remote interpreter. Remote interpreting is also not effective for deaf individuals who have other disabilities such as cerebral palsy, cognitive impairment, or mental health issues. Appropriate court or legal service staff must conduct an individualized analysis of the communication and other needs of the deaf party prior to any agreement that VRI can be effective. This analysis should also apply to deaf individuals who use sign languages other than American Sign Language (ASL), and VRI should not be used with those individuals.

D. Interpreter Preparation & Control

Whether remote or in-person, interpreters are more effective if provided with preparatory information regarding the court or legal service proceeding. Interpreters should be provided with sufficient information about the nature of the case and the nature of the proceedings. Court filings and other documents and information should be sent electronically to the interpreter sufficiently in advance of the matter to have time to review them.

The court or legal service provider should have a procedure or system that allows the remote interpreter to interrupt the proceeding to inform them of communication issues or errors, to seek clarifications, to regulate the pace, or to minimize participant cross-talk. The optimal VRI system will have built-in technology that permits the interpreter to interrupt the proceedings for such reasons and thereby ensure effective communication for the deaf party. Further, it is also optimal if the remote interpreter is able to control the VRI cameras that allow the interpreter to better see different parts of the proceeding at will.

Judges, attorneys, and other participant should be mindful to keep the remote interpreter apprised of any on-site occurrences or pauses that may not be readily apparent to persons not in the room. For example, the court can make a statement to the effect that the attorney is looking in their briefcase for their calendar or that the court is waiting for a witness to be brought forward.

E. Length of Proceeding

Courts and legal service providers should strive not to use VRI for any proceeding longer than 30 minutes. The use of VRI is conducive to emergent or unplanned proceedings that are not complex and are less than 30 minutes in length. Part of the reason for this is the difficulty of providing accurate and effective interpreting services remotely. Research has shown that VRI work is more mentally taxing on an interpreter than in-person interpreting work. Interpreters generally become fatigued after fifteen to eighteen minutes interpreting remotely.²⁰ Some of the factors contributing to this fatigue include being

²⁰ Barbara Moser-Mercer. Remote interpreting: Assessment of human factors and performance. Joint project International Telecommunication Union (ITU)-Ecole de Traduction et d'Interpretation, Université de Genève (ETI), May 19, 2003. Available at <http://aiic.net/page/1125/remote-interpreting-assessment-of-human-factors-and-performanceparameters/lang/1>.

separated from the speaker, being less able to rely on visual cues, having truncated or no preparatory information about the case and the client, having less ability to assert themselves into the process for clarifications, and having less ability to seek the court's assistance in handling multiple parties speaking simultaneously.

F. Attorney-Client Communications

For court and legal purposes, the use of VRI will require arrangements to be made for privileged attorney-client communications. In an on-site court proceeding, the deaf party would be able to communicate privately with their lawyer with an interpreter at their table. By contrast, a remote interpreter on VRI is visible to everyone in the court proceeding and can be heard by everyone as well. To ensure that the deaf party has the ability to engage in privileged confidential communications with their lawyer, there must be an option for the deaf party to use the VRI interpreter in a closed manner, that is not seen or heard by anyone else but their attorney.

The optimal means of effectuating confidential privileged communications between the attorney and the deaf party is to clear the courtroom of everyone but the attorney and the deaf party while they engage in such communications. This method has been used by the Minnesota courts.

Another option is for VRI systems to have a built-in feature whereby there are headsets that permit the attorney alone to be able to hear the remote interpreter while voice interpreting for the deaf party. This method has been used by the California courts. However, this system does not shield the visibility of a deaf party signing to the interpreter or the interpreter signing to the deaf party with other people in the room if they are fluent in ASL. Arrangements would need to be made so that the deaf party and the remote interpreter are shielded somehow so that only they can see each other.

3. Qualifications of VRI Interpreters

The ADA sets the minimum standard for a "qualified interpreter" and courts and legal service providers need to make sure that any interpreters, in-person or remote, are qualified to provide legal interpreting. Generally, court interpreters are vetted through the state or federal administrative office of the courts and a registry of approved interpreters are often maintained by that office. Additionally, many states have licensure or other legal interpreting statutes which set forth additional requirements to be considered qualified to work in courts.

Any court or legal service provider using VRI must ensure that the remote interpreters providing the services are on the state or federal approved list of court interpreters. In addition, some states' licensure requirements apply to remote interpreters, so the court or legal service provider would need to verify from the VRI provider that the remote interpreters are appropriately licensed or credentialed for legal interpreting in their state.

Entering into a contract with a commercial language service vendor can be dangerous without adequate vetting of the qualification of the interpreters the vendor provides. Often large language services companies have inadequate methods of identifying and screening ASL interpreters. Many of those large language services do not have staff with subject matter expertise in sign language interpreting. Courts and legal service providers need to include requirements in the contract with the language service company that their ASL interpreters are qualified, certified, licensed, and registered with the court's administrative office.

In the United States, many but not all sign language interpreters acquire a general interpreter certification through either the Registry of Interpreters for the Deaf (RID) or the Texas Board for Evaluation of Interpreters (BEI). The RID certification is national in scope, while the Texas BEI is utilized in

approximately six states. RID formerly issued a Specialist Certificate in Legal Interpreting to successful generalist certified interpreters who passed a specialized legal interpreting examination, but ceased this certification in 2015. BEI has a court certificate which is recognized in Texas. Consequently, there is no national specialist certification for legal interpreting at the present time. However, until the courts resolve the issue of qualifications for sign language interpreters, courts and legal service providers can *voir dire* or interview individual ASL interpreters and look to their experience and training in legal interpreting to determine whether they are qualified. Courts and legal service providers should utilize this vetting process regardless of whether the interpreters are in-person or remote.

Minimum Technical Requirements for VRI Usage with In-Court Video Equipment

When the decision is made to use VRI, it can only be effective with specific minimum levels of technical specifications. Using VRI with insufficient bandwidth or deficient hardware and software will cause the video quality to be choppy, grainy, pixelated, frozen, and inconsistent. Such poor video quality will result in the interpretation being ineffective and not understandable to the deaf party. The Department of Justice's regulations specifies that the technology used to provide video remote interpreting must be sufficient to support the video signal, per the following regulations:

- (d) Video remote interpreting (VRI) services. A public entity that chooses to provide qualified interpreters via VRI services shall ensure that it provides -
 - (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
 - (2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;
 - (3) A clear, audible transmission of voices; and
 - (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.²¹

The DOJ regulations provide a general guidance, but it is often difficult to determine what exactly is needed to provide this level of video and audio clarity. To ensure compliance with such general requirements, the NAD has developed minimum technical specifications for VRI in healthcare settings, and the same specifications are applicable for courts and legal service providers. These specifications are as follows:

- Video screen: A flat-screen, LCD computer monitor with a minimum of 24-inch screen size, as measured diagonally from corner to corner, for the parties and the providers, with a resolution of at least 1280x720 pixels;
- Video camera: Both provider's and parties' cameras should be capable of 720p (not 720i) or greater. The camera should be able to record at a minimum of 30 frames/second. The cameras should use progressive scan instead of interlaced scan to preserve smoothness and clarity of image and to reduce any possible artifacts or judder. Ideally, the camera would record in 1080p at a rate of 60 frames per second;
- Endpoint bandwidth: 1024k bandwidth or higher on both ends of the call, and an IP overhead of 1.2M Ethernet connection;
- Computer: A computer should have at a minimum:

²¹ See 28 C.F.R. §35.160 and 28 C.F.R. § 36.303.

- 2.6 gigahertz processor speed;
- 8 gigabytes of physical RAM;
- 500 gigabytes of hard drive space available;
- A dedicated video card;
- Available USB ports that are at 2.0 or higher;
- Be dedicated solely for the purpose of VRI services;
- Quality of Service (QoS): Wide Access Network (WAN) connections for VRI should be set using QoS settings which will account the potential number of concurrent video calls over the WAN, and determine the quality settings for each call. This will require bandwidth reserving to happen, so the WAN to be utilized should be checked to see if there is adequate bandwidth for VRI calls as well as all other services, such as email, web traffic and hosting, and others;
- Encryption: Endpoints for VRI will support encrypted transmissions, preferably using AES-256 or similar. This will be applied regardless of the type of endpoint used for VRI;
- Firewall openings: The use of the WAN and its QoS settings should create a safe passage for data to travel through the firewall, and reduce the likelihood of interruptions for VRI calls;
- Uniform Resource Identifiers (URI): All endpoints should be able to receive and place video calls using URIs;

An additional specification for legal purposes includes having the court or legal service provider having available a portable scanner that is capable of scanning information quickly and legibly to be sent electronically on the spot to the remote interpreter. This would permit the use of sight interpreting as well as keep the VRI provider informed throughout the event.²²

Best Practice Guidance for VRI Usage Through Video Conferencing Platforms

During the pandemic and the resultant social distancing, many courts and legal service providers are conducting proceedings through a video conferencing platform (such as Zoom, Google Meet, etc.) with all parties participating remotely. While such as setup is different from utilizing specialized hardware and software in courtrooms and other legal settings, the expectations and standards for effective communication still applies when deaf parties are involved.

NAD recommends the following standards and best practices to ensure that there is effective communication for deaf parties during the use of a video conferencing platform for court and legal service proceedings.

- A court or legal service proceeding that takes place through video conferencing and includes a deaf party needs to have high speed internet connections for all participants. Proceedings should not be held without a strong broadband connection on a device such as a hardwired laptop or a desktop computer. Whether the interpreter or the deaf party is using a computer or mobile devices, the use of wireless internet connection (Wi-Fi) can be problematic for video quality and is not recommended for effective communication purposes.
- Video conferencing platforms have multiple “windows” that show each participant and as more people are on the platform, the size of all the windows shrinks. With too many participants, it becomes difficult for a deaf party to be able to see the interpreter and vice versa. Therefore, it is important that the interpreter is visible at all times to the deaf party through the use of platform features that allow for “pinning” or “spotlighting” of the interpreter’s window screen to maximize the size of that screen for the deaf party to observe. The interpreter also needs to be able to pin or spotlight the deaf party.

²² 2019. VRI Program Draft Guidelines. New Mexico Commission for the Deaf and Hard of Hearing (personal communication).

- It is important to ensure that the video conferencing platform is configured to allow the pinning/spotlighting of the interpreter. Often, the default on such platforms is to give the spotlight automatically to whoever is speaking, and this default needs to be adjusted for the benefit of the deaf party prior to the start of the proceeding. the large screen option follows an auditory track.
- In addition, some video conferencing platforms allow an administrator to control the pinning or spotlighting feature. If this is the case, then the administrator needs to either enable the participants (interpreter and deaf party, especially) to pin or spotlight each other. Otherwise, the administrator will need to control the pinning/spotlighting throughout the proceeding in a way to enable whoever is signing in ASL to be on the larger pinned/spotlighted screen.
- Court proceedings usually require more than one interpreter, and often the interpreters work as a team in such proceedings. In a remote interpreting situation, the interpreting team needs a way to monitor and confer (with permission from the court) about the interpretation in a manner that is private. It is effective and recommended that the interpreting team has its own separate video conferencing meeting occurring simultaneously with the court proceeding. This separate video conferencing meeting would allow the remote interpreters to support each other and confer without interrupting the court proceeding. The members of the remote interpreting team will need to have two separate hardwired devices that enable them to be on two video conferencing meeting at the same time.
- Preparation remains a critical issue in terms of allowing the interpreter to obtain as much information as possible about the case beforehand. At the same time, training and preparation to appropriately and efficiently use the technology must be conducted so that all parties are able to access the proceedings effectively.
- During the proceedings, if there arises a problem with any of the participants' video (e.g., it is blurry, choppy, pixelated, or frozen), then the proceeding will need to be paused.
 - If the video resumes after the internet signal stabilizes, the proceeding can continue.
 - If not, the proceeding should be rescheduled.
- If the deaf party does not have adequate equipment or internet access, the court should make arrangements for the deaf party to be able to participate effectively in the remote proceedings.
 - The court may provide a safe space with the proper technology to where the deaf party can physically travel while following all proper safety protocols.
 - In the event that a space is provided for the deaf party to join the video conferencing platform and proper safety protocol is possible, the interpreter should also be afforded the opportunity to physically travel to the environment and provide the services to the deaf interpreter on-site.
- For deaf parties who have additional disabilities or other issues, the court and legal service provider should engage in a dialogue with them to determine how best they can participate in any proceeding during a health crisis. For example, a significant number of DeafBlind individuals who use ASL are not able to join a video conferencing platform at all. For such individuals, it may be necessary to provide space for the DeafBlind party to be in a space with the appropriate interpreter, if safety protocols permit it.

Minimum Requirements for Procedures and Staff Training

The Department of Justice's regulations implementing Titles II and III of the ADA states that entities shall ensure "adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI."²³ Court officers and staff need to be fully trained to operate VRI technology before VRI can be used for court and legal proceedings.

²³ See 28 CFR 36.303(f)(4) and 28 CFR(f)(4).

Further, courts should prepare and share materials on how VRI equipment can be used by judges, court personnel, attorneys, interpreters, and deaf parties. The materials should provide information to all such parties on how to request the use of VRI, how to use VRI effectively, how VRI can be stopped if it is not effective, and how a proceeding can be rescheduled if the VRI is not effective.

Notice should be posted in the courtroom and in legal service providers' offices indicating the availability of VRI as an option for communication access and the availability of more information about VRI. This information should also be available through ASL via video (which should also be captioned) on the website of courts and legal service providers.

A more detailed policy and procedures document should be developed internally, with three groups in mind: the deaf parties, deaf audience members, and interpreters.

Conclusion

Video Remote Interpreting technology may provide effective and efficient communication in limited instances. However, a careful analysis of the lessons learned from the problems that accompanied the extensive use of VRI in healthcare settings should inform the implementation of VRI in court and legal settings. Laws requiring language access for deaf and hard of hearing people in court and legal settings require entities to provide reasonable accommodations that are effective and not simply convenient. VRI should not be implemented without the participation and consent of deaf and hard of hearing stakeholders. Courts should establish protocols for the limited settings in which VRI can be effective and allowed to be used. Courts and legal service providers must ensure that the interpreters used through VRI are qualified and competent to work in legal settings. Courts and legal service providers must ensure that the court staff is trained and proficient in using the technology but also that a robust technological infrastructure is in place. Minimum standards are provided in this document to assist toward effective use of VRI in terms of the technological requirements as well as when it is appropriate to be used. The NAD stands ready to provide technical assistance to courts and legal services providers who wish to establish a solid remote interpreting program that comports with federal legal requirements for accessibility.