A Resource Guide for Lawyers, Judges, and Other Dialogue Leaders
Overview

If you are a lawyer, judge, or other leader interested in conducting a Dialogue on the Courts at a school in your community, follow these steps to help ensure a meaningful experience, for you and the participants alike.

A note to teachers or community group leaders: If you are initiating the program, please review these steps with legal professionals whom you have asked to conduct a Dialogue.

Step 1. Identify a school or community group. Contact a school where your or your friends’ children are students, a school in your neighborhood, or a school where you know members of the teaching staff. You might also contact community groups, for youth and adults, such as the YMCA, Girl Scouts, Kiwanis Club, or League of Women Voters. Friends and coworkers might also recommend a school or community group that would like to participate in the Dialogue program.

Step 2. Set up an appointment for your visit. Contact the school principal, department head (social studies, history, government, or civics), or community group leader. Explain the program to them and offer them a copy of the Dialogue Resource Guide. Ask if they would be willing to schedule a date and time to conduct the Dialogue. They should set aside somewhere between 45 and 90 minutes.

Step 3. Discuss your visit with the teacher or community group leader. Discuss the ages and experiences of the participants. Determine what part of the Dialogue you would like to focus on and provide the teacher with a copy of the Resource Guide, focusing on the parts you wish to discuss. In addition, consult with the teacher or community leader about additional background materials that might help participants. Request that name tags or tent cards be printed with the participants’ names. Request equipment you will need (e.g., LCD projector, screen, flip chart, or microphones).

Step 4. Prepare participants for your visit. Ask the teacher or community leader to distribute any materials or assign any background readings you want participants to discuss at least one day before your visit.

Step 5. Prepare yourself for your Dialogue. Know your subject. Review the Resource Guide before you go, and think of additional follow-up questions that may help participants explore the issues raised by the Dialogue. Using the step-by-step directions and questions in the Resource Guide, map out where you would like the discussion to go, but be prepared to be responsive to participants’ questions and provide background information, if needed. As appropriate, personalize the topic by referring to your own experiences.

Step 6. Follow up after the Dialogue. Write a thank-you note to the teacher or community leader. Make yourself available to answer questions participants may raise following the Dialogue.
The Dialogue on the Courts is designed for use by lawyers, judges, teachers, and other community leaders in the classroom and with youth and community groups.

It explores the role of the courts in our constitutional democracy. It is an opportunity for Americans to reflect on the importance of courts, not only in our government, but also in our everyday lives. Open and accessible courts are the cornerstone of a free society. The courts are where we go to have our rights protected, our injuries re-dressed, and our disputes resolved. Whether you are a consumer or a corporation, a victim or an accused, a lender or a debtor, a parent or a child, the work of the courts affects your everyday life. Recent budget cuts at the federal, state, and local levels have seriously compromised our courts’ ability to function effectively and keep the wheels of justice turning.

This Dialogue Resource Guide is an educational complement to the 2012 Law Day theme of “No Courts, No Justice, No Freedom.” The two topics selected to represent this theme are designed to inform and engage Dialogue participants in robust, reflective, and substantive discussions that help to underscore the importance of the courts and their role in ensuring access to justice for all Americans.

Part 1 introduces the judiciary as the third branch of American government, and how it relies on, as well as supports, the other two branches, legislative and executive. It also explores challenges facing the judicial branch, and implications for law within a government in which the judiciary cannot function.

Part 2 continues the discussion with a focus on access-to-justice issues. The Sixth Amendment to the Constitution guarantees a right to counsel, but what if you do not speak the same language as your lawyer? the judge? This part of the Dialogue features a hypothetical scenario, in which participants debate a proposed “access to translators” law. They will engage in the challenging task of interpreting laws, as well as explore how our courts might ensure access to justice in the face of challenges.

Make sure to go online to www.lawday.org for more resources to conduct the Dialogue. You may download ready-to-use PowerPoint® presentations for each of the two parts of the Dialogue, which include key graphics and text. (PowerPoint® is a registered trademark of Microsoft, Inc.)

In consultation with the teacher or community group leader, decide which parts of the Dialogue would be most appropriate for your group. Step-by-step directions and discussion prompts throughout this Dialogue Resource Guide can help you discuss these topics with participants.

Note: Text in blue represents information and instructions to help leaders facilitate the Dialogue.

The ABA Dialogue Program

The Dialogue on the Courts is the tenth annual edition of the ABA Dialogue Program. This Resource Guide for Dialogue leaders can be used for Law Day and throughout the year. The ABA Dialogue program provides lawyers, judges, teachers, and other civic leaders with the resources they need to engage students and community members in discussions of fundamental American legal principles and civic traditions. Supreme Court Justice Anthony Kennedy introduced the first Dialogue program, the Dialogue on Freedom, at the 2002 ABA Midyear Meeting in Philadelphia. Subsequent Dialogues have addressed Brown v. Board of Education, the American jury, separation of powers, youth and justice, the rule of law, Lincoln and the law, law in the 21st century, and the legacy of John Adams. All Dialogues and supporting resources are available at www.lawday.org.
Part 1: Role of the Courts

Article III of the U.S. Constitution establishes a Supreme Court of the United States and “such inferior courts as the Congress may from time to time ordain and establish.” Today, those “inferior courts” include district courts and circuit courts of appeal, which review the decisions of the district courts. States also maintain their own court systems. This system of courts influences our lives every day. This portion of the dialogue will explore the role of the judiciary within our constitutional democracy, as well as our everyday lives.

Note: Download the corresponding PowerPoint presentation for use with this dialogue from www.lawday.org.

Refer participants to the following excerpt from Article III of the U.S. Constitution:
“The Judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”

Explain to participants:
States also maintain their own court systems.

Offer participants a brief explanation of how your state court system is organized. You may even download a diagram from your state or local court Website. Encourage participants to recognize the connection among federal, state, and local courts.

Refer participants to the Alexander Hamilton quote from The Federalist No. 22:
“Laws are a dead letter without courts to expound and define their true meaning and operation.”

Ask participants:
What do you think Alexander Hamilton means by “dead letter”?  
Answers should focus on laws having little meaning, not being enforced or respected, or relevant to everyday life.

Ask participants:
What might happen if laws are seen as “dead letter”?  

Explain that the Constitution creates a framework for our federal courts. Refer participants to the court diagram, and highlight the different courts within the federal system.
Answers might include laws not followed or enforced, and therefore not effective; or legal system would not provide people with avenues for redress. The result of these scenarios could be disorder or injustice in society, disrespect for the rule of law, and lack of public confidence in the legal system.

Refer participants to the cartoon. Explain that it appeared in Florida newspapers and raises concern about the courts in that state.

Ask participants:
What does the cartoon represent?
Answers might include: three branches of government, courts in danger, or debates within the government.

Ask participants:
What do you know about the branches of government?
Participants might note the names and powers of each branch, and how they interact with one another through a system of checks and balances.

Why do you think the branch representing the courts is smaller than the other two tree branches?
Answers might include fewer people in the judicial branch than the other two, courts are of less importance than the executive or legislative branches, courts have less power, or the courts are lacking funding, and so are withering away.

Ask participants:
Let’s look at the quote in the cartoon. Does it tell us why the judicial branch is holding a cup?

Help participants understand that the judicial branch is begging for money. The quote supports this. Moreover, courts, unlike the other two branches, are not in control of their own budget because they have no power to appropriate government funding.

Ask participants:
What would it mean for the government if the judicial branch is diminished or eliminated? What impact would this have on communities? the government?
Participants might suggest that there would be fewer places to hold trials, fewer opportunities to interpret laws, and that the judicial checks and balances to the executive and legislative branches also would be diminished. (Encourage participants to focus on the relationship among the three branches of government and their interdependence.)

Wrap up:
The judicial branch plays a vital role in the American system of government by providing checks and balances to the executive and legislative branches, and ensuring access to justice for all Americans. All of the branches of local, state, and federal government are important foundations of our society. They rely on one another, but must be separate, independent, and coequal branches.
Part 2: Access to Justice: Language Barriers

Given how important courts are in our society, it is vital that everyone has equal access to them. The following dialogue should help you lead a discussion about why access to justice is a key component of our constitutional democracy, yet not always easy to achieve or define.

Start the discussion by drawing participants’ attention to the fact that everyone has a right to access our court system.

Ask participants:
Who should be able to use our court system?

Participants should hopefully be open to the notion that everyone, regardless of economic status, should have access to the courts. Encourage participants to think about the fact that citizens and noncitizens have a right to access the courts. Your access to the court should also not be affected by your age, language, education, location, or disability.

Note: Download the corresponding PowerPoint presentation for use with this dialogue from www.lawday.org.

Introduce:
The Sixth Amendment to the U.S. Constitution protects our right to fair and speedy trials. This amendment ensures that criminal trials be conducted in a timely fashion, that if you want a jury, you receive one, that you fully understand the charges against you and the testimony of any witnesses, and that you be able to call witnesses to testify on your behalf and have an attorney help you.

Sixth Amendment to the United States Constitution
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defence.

How many of you have heard a different language being spoken?

Prompt 4–5 volunteers to tell you what language they have heard spoken, and if possible, who was speaking it.

Highlight for participants:
This quick survey helps us see how many languages are spoken in our community, and we can safely assume that in other communities, additional languages are common. It is obviously important that individuals who speak these languages, and don’t speak English as a primary language, can understand what is going on if they have to go to court.

Refer participants to the language chart and compare to your survey results.

<table>
<thead>
<tr>
<th>Top 11 Non-English Languages Spoken in American Homes in 2007</th>
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<tbody>
<tr>
<td>Spanish or Spanish-Creole</td>
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<tr>
<td>Chinese</td>
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<td>Tagalog</td>
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<td>French</td>
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<td>Vietnamese</td>
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<td>Italian</td>
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<td>Polish</td>
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<td>Portuguese</td>
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Source: U.S. Census Bureau

Ask participants:
If English was not your first language and you were involved in a court proceeding, what do you think the courts should do to help you?

Answers can include providing written transcripts of proceedings in different languages or having translators on staff.

Propose the following hypothetical scenario:
Let’s assume that in our state, the legislators have passed a law that says that every person involved in a court case for whom English is not their primary language must have a court-funded translator available for each hearing. The legislators in our state felt that such a law would help ensure all residents have access to the courts and that the Sixth Amendment right would be guaranteed.

Explain to the participants that you are going to work through a number of situations to see if this law will work. All scenarios are available on PowerPoint.

Scenario 1
A woman is charged with a traffic violation. She is originally from Poland but has lived in the United States for 15 years and speaks enough English to
maintain a job at the local grocery store. She has requested a translator as she doesn’t understand all the legal terms that will be used during her trial. Should she be appointed a translator under the law?

Ask participants to justify their opinions. Responses may reference funding issues, the importance of understanding court proceedings, how exactly to decide when a person knows “enough” English.

Scenario 2
Let’s assume that Spanish is the most widely spoken language in our community after English, with 30 percent of the population indicating that they feel most comfortable speaking Spanish. There are 5 courthouses in our community, each with approximately 10–20 courtrooms. Our town leaders have decided to hire 6 translators. Does this satisfy the law?

Ask participants to justify their opinions. Encourage participants to think about logical ways to determine a number, such as based on the number of courtrooms, the ratio of Spanish-speaking litigants to English-speaking litigants, or hiring people on an “on-call” basis.

Scenario 3
Our community is facing a tough financial situation and must cut court funding by 30 percent. In order to make this money up but still fund the interpreters program, our community has decided to reduce the number of deputy sheriffs in each courthouse. There has been some criticism that this will make our courts less safe. Do you think this is the correct course of action?

Ask participants to justify their opinions. Participants should be encouraged to think both about how the government could find money from other sources (cutting other social services, restricting the number of days the courthouse is open, laying off nonessential court workers) and ways to raise additional funds (increase income tax, increase sales tax, add a fee for certain court services, such as getting printed copies of orders).

Scenario 4
Dumi is a rare language spoken in Nepal. Let’s assume a family that speaks Dumi has just moved to our community and one of the family members has been charged with a crime. There is one person in this part of the country who can translate Dumi, but she lives a 2-hour flight away and is busy for the next three months. Do you think such a delay is acceptable under the law?

Ask participants to justify their opinions. Participants should further refine whether a language barrier affects one’s ability to access justice in violation of the Sixth Amendment. Encourage them to think about whether a three-month delay would violate the Sixth Amendment. Participants may also want to explore notions of equality, and particularly if the state is going to offer translators for one language, how far they have to go to accommodate everyone.

Scenario 5
There is a small French community in our area. One of the families is incredibly wealthy, and a member of their family is charged with a very serious crime. Should the state provide a translator for this defendant? Why?

Ask participants to justify their opinions. Participants will likely be resistant to this idea, but have them work through the equality notion touched upon in the previous discussion. Also, probe how much money is “too much”? What if the defendant was an outcast son who had been disowned by the family? Participants should begin to see that applying standards may not always be easy or fair.

To conclude this activity:
Having worked through these different situations, would you make any changes to our law?

Participants may think about narrowing or limiting the applicability of law, perhaps based on economic need or the type of trial. Encourage participants to consider what is the bare necessity required by the Sixth Amendment.

Wrap up:
To manage budget shortfalls in difficult economic times, many state and local lawmakers have had to address many of the issues we have just looked at when reducing court funding. As we have seen with these scenarios discussed today, declining court resources can affect access to the courts, and in turn, cause serious Sixth Amendment concerns. We must continue to have conversations such as this to determine those freedoms we value most and to make a commitment to protect them.