

JUDGE HORA'S A-TEAM AND APPROPRIATE DISPUTE RESOLUTION IN SCHOOLS: AN OPPORTUNITY FOR YOUNG PEOPLE TO CONTRIBUTE TO THE POLICY PROCESS

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I WHAT IS AN A-TEAM?

South Australia is known internationally for its innovative and inclusive approach to a number of social justice issues. This approach is evident when considering the social inclusion agenda, which resulted in the appointment of a Social Inclusion Board, introduced in 2002 by the current Labor Government. The Board was asked by the Premier to develop and recommend innovative strategies to manage the challenges of marginalised community members including homelessness, mental health, youth offenders, Aboriginal wellbeing and, 'economic disadvantage'.¹ South Australia is also the only state that permits prisoners to vote in state elections regardless of sentence type or length, thereby recognising those who are incarcerated as citizens of society and including them in the democratic process.² In this context, it is not surprising that the state government initiated a program, whereby young people are brought together annually to generate recommendations that feed into the decision-making and policy development process.

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¹ Social Inclusion Unit, 'Young Offenders - Breaking the Cycle: A Preliminary Issues Paper' (2004) *Department of the Premier & Cabinet* <http://www.socialinclusion.sa.gov.au/files/YO_issues_paper.final.pdf>.

² Lisa Hill, 'Prisoner voting rights' (2009), Symposium: Protecting Human Rights in Australia: Challenges and Strategies, *Australian Review of Public Affairs* <<http://www.australianreview.net/digest/2009/11/hill.html>>.

The Office for Youth program known as the ‘A-Team’³ (the A refers to action) assembles a group of young people between 16 and 25 years of age from a range of backgrounds, employment and study areas. A-Teams are run in conjunction with the Adelaide Thinkers in Residence program, also unique to South Australia. The Thinkers in Residence program has operated since 2003, with a total of 19 Thinkers to date who are experts in their relevant fields, having lived within the community for a period of time to understand how we do things, and then make informed and innovative recommendations.⁴ Key policy areas focused upon include homelessness and opportunities for young people in education, employment and training.

Judge Peggy Fulton Hora (ret.) was asked to be the Adelaide Thinker in Residence for 2009/2010, and as such she resided within Adelaide in August to September of 2009, and March to April of 2010. Judge Hora is a retired Supreme Court Judge from California, who is an advocate for therapeutic jurisprudence and problem-solving courts. Therapeutic jurisprudence is the, ‘...study of the role of the law as a therapeutic agent...It focuses on the law's impact on emotional life and on psychological well-being’.⁵ It examines the legal impact and causes of the offence from a psycho-social perspective with an outcome focus that aligns with the needs of policy makers and legislators. It is from this viewpoint that problem-solving courts operate. One such example is the drug treatment courts in North America in which (contrary to the conventional adversarial approach), a team of professionals works to address the reasons for the offender being in court and the judge may act as a broker between the offender and the team; all of whom are working together to reach a solution to very complex social problems.⁶

³ For further information, refer to the state government Office for Youth website <<http://www.officeforyouth.sa.gov.au/Policy/OfYATeam/PreviousATeams/tabid/499/Default.aspx>>.

⁴ Refer to the Adelaide Thinkers in Residence website for further information on Judge Hora's residency <<http://www.thinkers.sa.gov.au/thinkers/hora/>>.

⁵ Australasian Institute of Judicial Administration, *Problem-Solving Courts*, (n.d.), AIJA <<http://www.aija.org.au/>>.

⁶ Peggy Fulton Hora, William G Schma and John T A Rosenthal, ‘Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the

II JUDGE HORA'S RESIDENCY

In light of this, Judge Hora's residency itself focused upon, 'Smart Justice: a 21st century approach to justice and public safety,'⁷ during which she considered the South Australian environment and recommended initiatives that are smart on crime (as opposed to the tough on crime mantra) and justice. Note that 'smart on crime' equates to those practices that are fair, timely and cost-effective. Within these parameters, Judge Hora's residency extended to overseeing two A-Teams that provided the opportunity for young people to have their voices heard, develop leadership, teamwork and presentation skills. The Judge Hora A-Teams comprised of a range of young people including university students, existing high school students, and community services employees, whose goal was to discuss current issues and develop recommendations for better responses by government. The commitment was one full day per week over six weeks plus research time outside of this period.

III HOW DID I BECOME INVOLVED?

As a 'Crime and Public Policy' Criminal Justice Honours student, I had written a paper titled 'Juvenile drug diversion programs in Australia: Best practice or a long road ahead?' Within the content, I examined the role of therapeutic jurisprudence in the South Australian context and how problem solving court principles could be better used in the state. As a result, I was approached by the Flinders University Law School Dean to participate in the A-Team, having been nominated by the Criminal Justice Honours Convenor.

Criminal Justice System's Response to Drug Abuse and Crime in America' (1999) 24(2) *Notre Dame Law Review*

<http://www.ndci.org/sites/default/files/ndci/NotreDame.Hora_.pdf>

⁷ Peggy Fulton Hora, "Evidence-based Sentencing" Using Cost-effective Evidence-based Practices: Adapted from the work of Roger K Warren', *Smart Justice: a 21st Century Approach to Justice and Public Safety* <http://www.thinkers.sa.gov.au/lib/pdf/Hora/Hora_Evidence-based_Sentencing.pdf>.

Subsequent to this, I was asked by the Office for Youth to mentor an A-Team given my employment background in the areas of student wellbeing and prisoner policy initiatives with the Commonwealth government.

IV APPROPRIATE DISPUTE RESOLUTION (ADR) IN SCHOOLS

Two A-Teams were derived from an initial group of 20 young people. Members were split into 2 groups of approximately 10 people with background and personal choice determining the final allocation. The first group examined the topic of 'Appropriate Dispute Resolution in Schools' while the second considered, 'Courts and Public Perception'. I was asked mentor the first group in light of my experience. The issue to be considered was presented to the group by the Office for Youth as follows. 'Discipline measures in schools are commonly designed to punish rather than resolve disputes and mend relationships. Discipline is a constant concern in schools, from minor issues such as students failing to complete their homework through to criminal offences'. Therefore, the questions to be considered comprised of the following:

- What are the alternatives to punishment-based discipline regimes in schools?
- How can these alternatives bring about better educational outcomes and justice for young people?
- What consideration should be given to alternative dispute resolution including peer courts?

V CONSIDERATION PROCESS

The initial consideration process comprised of an introduction to the issue, questions and considerations. Over the following weeks, the group met with key experts from the fields of education, and justice sectors, and senior public servants. The latter group included

representatives from the South Australian Department of Education and Children's Services (DECS), the Attorney General's Department,⁸ the Centre for Restorative Justice and of course, Judge Hora who spoke with the A-Teams on a number of occasions.

Information was provided to the team members via a variety of forums including workshops, panels and presentations. Of particular interest to the ADR group was evidence that suggested the use of traditional punitive measures including suspensions, expulsions and detention was not particularly successful, when addressing issues of student disengagement. Suspension was shown to provide no real solution to behavioural issues such as bullying (which has a strong focus in the schools at present). Additionally, parents could potentially be disadvantaged by the use of such methods as they may have to take time from work to stay home with the child(ren) involved.⁹

Group members had access to a range of experts in related fields who were able to speak of their experiences. For example, the Ambassador for Youth, Gavin Wanganeen spoke of his work with disengaged children. Additionally, a panel of principals using restorative justice principles in South Australian schools spoke to the A-Team, providing a comparison between the school and learning environment prior to, and after implementation of restorative approaches.

Group members were introduced to restorative justice approaches that attempt to repair any harm done and are relationship-based. This is particularly useful when attempting to

⁸ The Office for Youth falls within the Attorney General's Departmental portfolio.

⁹ As provided during the session with Debbie Laycock from the Centre for Restorative Justice who undertook a restorative justice pilot study in 11 South Australian schools: Centre for Restorative Justice, 'Effectiveness of Restorative Justice Implementation in South Australian Schools', (Annual Report, Offenders Aid and Rehabilitation Services of South Australia Inc) <http://www.restorativejustice.com.au/about_annual_reports.php>.

address issues of bullying and disengagement from school. Many models of restorative practice were discussed including, but not limited to, one-on-one discussions, learning circles and restorative conferencing. The benefits of such approaches were examined from an evidence-based perspective in the area of demonstrated relationship restoration. For example, 70 percent of schools utilising restorative practices found that peer relationships were restored, and 90 percent found that student-teacher relationships improved. Schools also observed decreased negative behaviour and increased student achievement, lower suspension rates, positive school environments, an increased sense of belonging and better communication skills.¹⁰

Participants were also provided with access to experts who discussed the potential barriers to schools adopting restorative justice approaches. The three key factors comprised of time, attitudes and funding. The group's challenge was to make recommendations that considered evidence-based benefits of restorative approaches in schools whilst also addressing the barriers to adoption and implementation.

VI PRELIMINARY PRESENTATION

My role during this process was to provide guidance to the group and clarification of any issues where required. I followed up with key experts for any further clarification (including organising for education experts to meet with the group when useful) and answered policy process questions including in the area of government education initiatives. This was particularly important as while many participants were currently engaged in the education system, they had little exposure to the government policy process. Regular meetings were held with the session facilitator, Office for Youth policy representatives, and the 'Courts and public perception' mentor to discuss progress, ways to get the ideas flowing (including team based activities) and follow up any useful resources for group

¹⁰ Ibid.

members. These meetings proved very useful for tracking progress and moving the groups forward towards final recommendations. One of my key roles included debriefing group members which was particularly important after lengthy discussions where differing points of view were expressed. I assisted the group with working through ideas to arrive at a mutually agreed position based on the evidence provided to them.

During weeks one to four, the A-Teams were provided with enough information to form opinions and make informed, educated recommendations for change. Draft recommendations were to be presented to a preliminary panel of influential experts in week five. The purpose was to assist with developing a level of comfort in presenting to government, obtaining valuable feedback from the very people who would play a crucial role in policy support and implementation, and finely tuning the contents for final presentation the following week. The preliminary panel consisted of:

- Geoff Baynes, Executive Director, Building Communities Division, Attorney-General's Department (Panel chair and A-Team Champion)
- Jerome Maguire, Chief Executive, Attorney-General's Department
- Janine Harvey, Assistant Director, Child and Student Wellbeing, Department of Education and Children's Services
- Gary Thompson, State Courts Administrator, Courts Administration Authority

Each group presented for 15 minutes with time allocated for an additional 15 minutes of questions and feedback from the panel. This exercise proved invaluable for both groups. The ADR A-Team initially recommended that a full-time counsellor be appointed, and that restorative principles be adopted in every state school. The DECS representative indicated that funding restrictions meant that this was not possible and suggested that thought should be given to a small scale project initially. The group took this on board and amended their final recommendations.

VII PRESENT FINAL RECOMMENDATIONS TO GOVERNMENT

Final recommendations were presented to government and key stakeholders during week 6. Those present included the Minister for Youth (Hon. Grace Portolesi) and representatives from DECS, the Courts Administration Authority, the Attorney Generals Department and the Office for Youth. All participants and key experts who ran workshops, panels and information sessions were in attendance where possible. The A-Team's family members were also invited to attend to support the participants, many of whom had never presented in such a formal environment to date.

In consideration of the plethora of information the participants had been provided with and the preliminary panel feedback, the groups presented their final recommendations to those who could drive and implement policy in these areas. The Alternative Dispute Resolution in Schools A-Team concluded that South Australian schools should, 'adopt restorative approaches as a way of reducing the number of behavioural issues within schools'. This could only be achieved, however, 'by teaching students how to effectively resolve conflict and communicate about disputes'.¹¹

Five recommendations were made in total as follows:

1. Mentoring partnerships be established between schools who utilise restorative practices and those schools who wish to do so.
2. More education about the benefits of restorative approaches and how they are used be provided to parents, students schools and the wider community via:
 - a) Restorative justice experts invited to speak to the school community about the benefits of such approaches;

¹¹ Office for Youth, 'Judge Hora A-Team report of recommendations' (Final Report, Government of South Australia, October 2010) 9, <<http://www.officeforyouth.sa.gov.au/Initiatives/OfYATeams/tabid/422/Default.aspx>>.

- b) Training provided to the school community in utilisation of restorative practices; and
 - c) Restorative practice information packs be distributed to all members of the school community.
3. University courses for teachers include modules about restorative approaches. Practical placements in schools using these approaches could be included within such courses.
 4. DECS consider undertaking a long-term pilot project in a cluster of schools to evaluate the effectiveness of restorative approaches and the impact upon bullying, suspensions and conflict.
 5. More full-time school counsellors are appointed to foster the successful implementation of restorative practices in schools.

The group found that the South Australian Government has a vision of a socially inclusive society, as indicated in the current South Australia Strategic Plan and that they are seeking a state where all Australians feel valued and have the opportunity to participate fully in their community. A key part of this participation is ensuring young people are fully engaged in their school community and as such the A-Team considered how appropriate dispute resolution methods such as restorative approaches within schools can help students to feel included in their school and the wider community.

As a result of their investigations, the group believes that restorative practices have the potential to bring about significant positive outcomes for young people, for schools and for the wider community.

VIII WHAT HAS HAPPENED SINCE?

As a mentor within the A-Team, I was exposed to a fascinating aspect of the policy process from the perspective of young people, whom ultimately the recommendations could have impacted upon during their school years and subsequent lives. The A-Team provided a rare opportunity to young people to represent their cohort

and participate in the government decision-making process. One of the most memorable aspects of the experience was the speech made to key stakeholders during the final presentation, by a young man who talked about his personal familiarity with the restorative process during his time under guardianship. He stated that it was particularly important for him to participate in the A-Team, 'to get my views across on the justice system, so I can give others a different view...so that they have a different way of looking at it to get better recommendations and a better point of view. Rather than just a bunch of professionals who think they know what they are talking about from reading a book or two but, half of them don't, to be quite honest with you'.¹² He went on to say that the A-Team recommendations, 'will provide better ways of preventing disengagement from school, and in doing that, hopefully prevent young people winding up in the court system,'¹³ as he did. How many opportunities are provided for young men in this participant's circumstances to provide such pivotal feedback in the policy process? It is worth noting that Judge Hora was so affected by the presentations of both teams that she was unable to speak for some time, overcome with emotion over the well-considered content and recommendations provided.

Members of the ADR A-Team presented directly to a DECS representative committee on 23 June 2010. The information was well received with a commitment from DECS to discuss the implementation of a pilot within a cluster of schools, and consideration of other recommendations. DECS further agreed to remain in contact with the A-Team, setting up networks for communication. As the A-Team Champion, Geoff Baynes is committed to pushing forward the recommendations and liaising with respective government representatives to motivate action.

¹² Office for Youth, 'Judge Hora A-Team report of recommendations' (Final Report, Government of South Australia, October 2010) 5, <<http://www.officeforyouth.sa.gov.au/Initiatives/OfYATeams/tabid/422/Default.aspx>>.

¹³ Ibid.

The final report by the A-Team detailing their research, considerations and final recommendations (with the assistance of the Office for Youth policy unit) was provided to the South Australian Premier, and the relevant key government decision-makers including the Courts Administration Authority and the Department of Education, and Children's Services. This report is now available to the wider community on the Office for Youth website. Titled, 'Judge Hora A-Team report of recommendations',¹⁴ the document describes the context of the A-Team and the process of consideration with final recommendations made. It now remains to be seen if, and to what extent the evidence-based recommendations made are incorporated into state government policy. Watch this space.

¹⁴ Office for Youth, 'Judge Hora A-Team report of recommendations' (Final Report, Government of South Australia, October 2010), <<http://www.officeforyouth.sa.gov.au/Initiatives/OfYATeams/tabid/422/Default.aspx>>.