

THERAPEUTIC JURISPRUDENCE

How do we maximize the effect
of Judicial Interaction

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Chief Judge Eddie Barker

Douglas County State Court

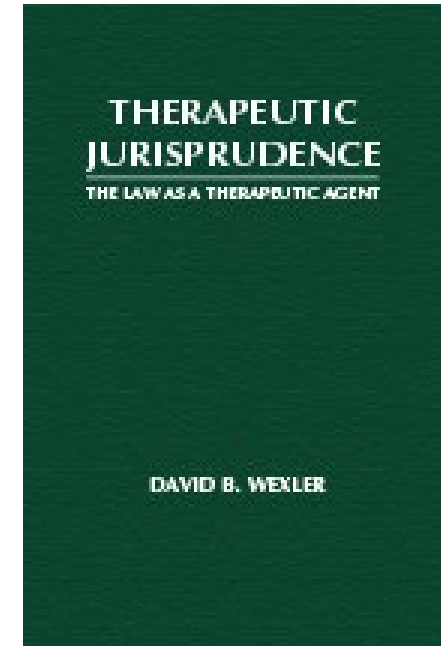


Joshua Nation, Clinical Director

Douglas County Accountability Court
Programs

THERAPEUTIC JURISPRUDENCE

WHAT IS IT?



Unlike traditional judges functioning in traditional courts, judges in problem solving courts consciously view themselves as therapeutic agents, and, therefore, one can see them as playing a therapeutic jurisprudence function in their dealings with the individuals who appear before them.



Judges develop an ongoing working relationship with the Participant and “this one-on-one relationship tends to facilitate honesty through familiarity and permits a DTC Judge to become a powerful motivator for the offender’s rehabilitation.”

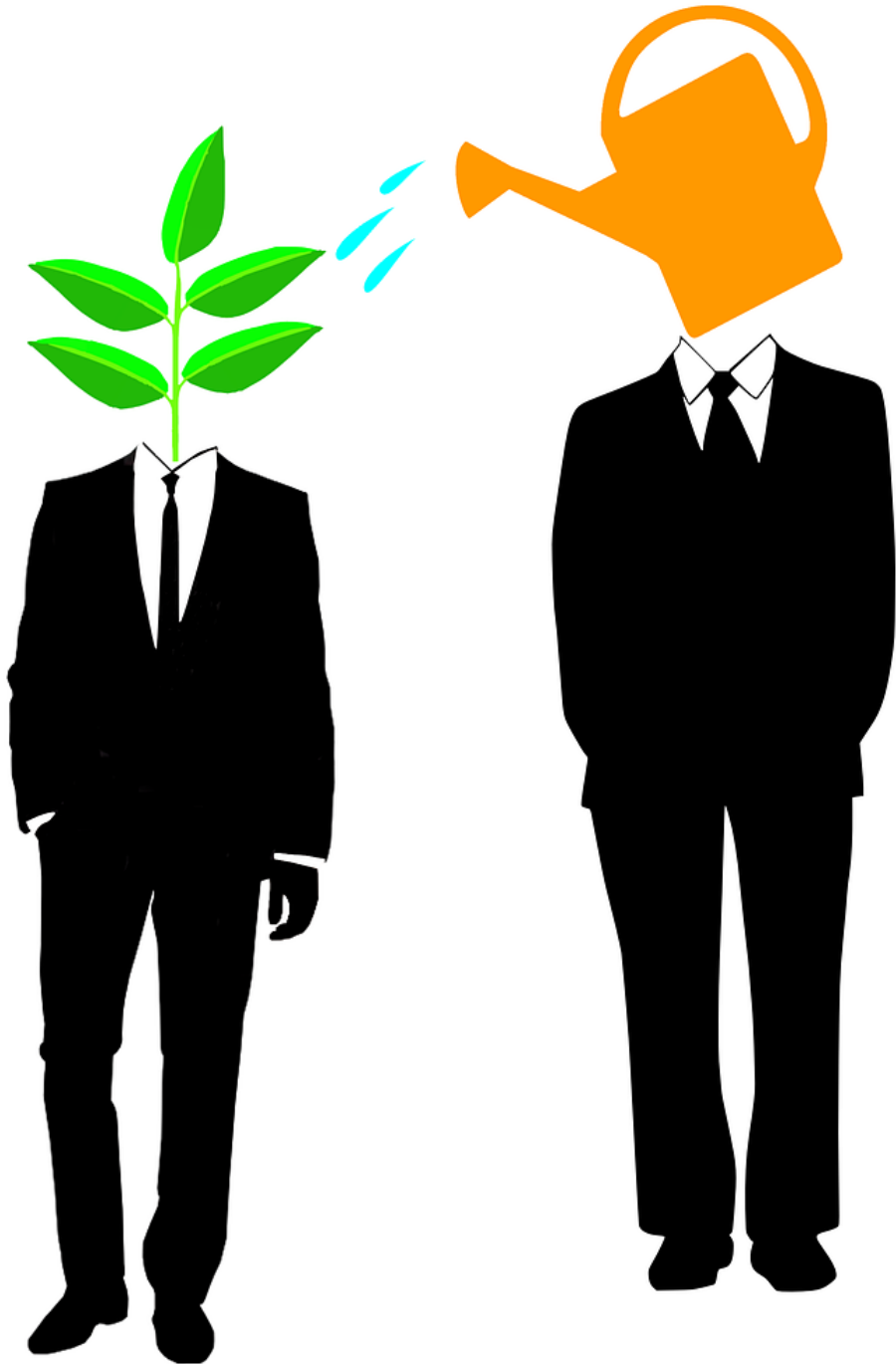


Therapeutic Jurisprudence and the Drug Treatment Court movement. Revolutionizing the Criminal Justice System’s Response to Drug Abuse and Crime in America.

Hon. Peggy Fulton Hora

Hon. William G. Schma

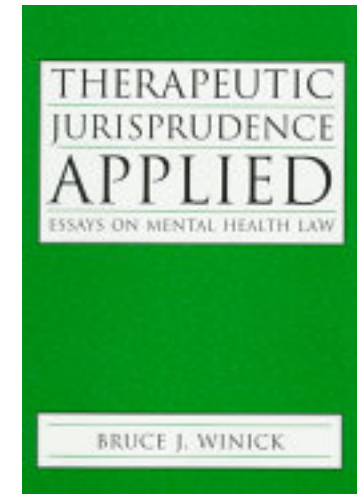
Jon T.A. Rosenthal



The judge, using the power and authority of the court, provides the addict with the initiative to stay in treatment. Without judicial leadership involving active monitoring of an offender's recovery, a DTC would not work. "Rather than moralize about an addict's character flaws, the Judge must assume, according to Judge Tauber, 'the role of confessor, task master, cheerleader, and mentor.'"

Without being conscious of its use, DTC's have been applying therapeutic jurisprudence to the problems of addicted criminal defendants.

For therapeutic jurisprudence scholars, DTC's represent the first consistent use of therapeutic jurisprudence in our criminal justice system.



HOW DO WE MAXIMIZE THE EFFECT OF THE JUDICIAL INTERACTION?

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- I. What should you know?
- II. Why should you know it?
- III. How do you use what we know?
- IV. What are the results/outcomes you hope to attain?



WHAT SHOULD YOU KNOW?

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ROLE OF THE JUDGE IN A TREATMENT COURT

“The role of the Judge is to engage people in treatment, motivate them in treatment, and be willing to reengage them when they slip and fall and fail without doing blame.”

American University, BJA

A Technical Assistance Guide For Drug Court Judges on Drug Court Treatment Services

Kushner, Peters and Cooper (2014)





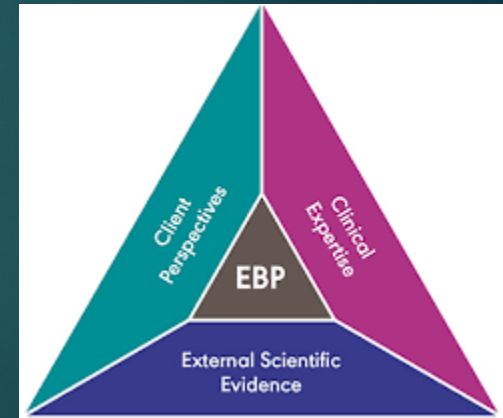
What exactly does evidence based mean and why does it matter?

Evidence based treatment (EBT) is treatment that has undergone rigorous research studies and has been proven to be effective in addressing specific problems within a specific population when said treatment is implemented with fidelity.

Evidence based practices (EBP) is the integration of the best available research, clinical expertise, client preference, ethics, and culture to guide the delivery of treatment and services.

Best Practice is the generally accepted method or technique that is widely recognized as delivering superior results.

Accountability Courts are expected to implement EBT and EBP while adhering to Best Practices.



What evidence based treatments are we familiar with?

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Moral Reconciliation Therapy (MRT)

Thinking 4 a Change (T4C)

Cognitive Behavioral Interventions for Substance Abuse (CBI-SA)

MATRIX Model

Seeking Safety

Partners for Change Outcome Management Systems (PCOMS)

Illness Management and Recovery (IMR)

Relapse Prevention



WHY SHOULD WE KNOW IT?

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WORKING RELATIONSHIP BETWEEN JUDGE AND TREATMENT

Everyone is working toward the same goal and a good working relationship between treatment and the Judge will strengthen the interactions of participants with both.

- Participants do better when they believe all parties are working toward their benefit
- Participants are more engaged in group when they know they may have to discuss the lessons with the Judge
- Participants attribute more credibility to both treatment and the Judge when they are being consistent with the message of recovery
- Participant outcomes are strengthened when accurate and complete notes are entered into the Case Management System by treatment and staff





“The primary mechanism by which drug courts reduce substance use and crime is through the Judge.”

- When offenders have more positive attitudes toward the Judge, they have better outcomes
- Judges with a more positive judicial demeanor (respectful, fair, caring and knowledgeable) produce better outcomes

The Multi-Site Adult Drug Court Evaluation:
Executive Summary



A survey conducted by the Drug Court Clearinghouse at American University reported: “Eighty percent of [drug court] participants [surveyed] indicated they would not have remained if they did not appear before a Judge as part of the process.”

NDCI

The Drug Court Judicial Benchbook, (2017) p.51

Knowledgeable Judge Helps Ensure Treatment's Fidelity to the Model

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“What separates drug court Judges from traditional Judges is training in addiction, understanding how to motivate behavior change, and simple empathy. Drug Court Judges do not act as therapists or amateur psychiatrists. However, the relationship between the drug court participant and the Judge is a significant factor in recovery.

NDCI

The Drug Court Judicial Benchbook, (2017) p.51



Just as judges dealing with antitrust cases need to understand basic principles of economics and judges dealing with patent cases need to understand basic principles of engineering, judges in problem solving courts, dealing as they do with human problems, need to understand some principles of psychology, the science of human behavior. They must be aware that they are functioning as therapeutic agents, and that how they interact with the individuals appearing before them will have inevitable consequences for their ability to be rehabilitated or otherwise deal with their underlying problems.

Fordham Urban Law Journal, Vo. 30 | Number 3, 2003, Bruce J. Winick



Enfusing Treatment Language into the broader program and court

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“Be smart, not strong.”

“Relapse is a process, not an event.”

“Disloyalty is the lowest moral and behavioral stage in which a person can function.”

“There are 168 hours in a week.”

“Develop action plans for your goals.”



Keeping a focus on reducing recidivism

Drug Courts reduce crime by as much as 45% compared to traditional sentences.

Drug Courts work:

Better than jail or prison

Better than probation alone

Better than treatment alone.

COURT TIME IS USED BEST WHEN IT REINFORCES TREATMENT GOALS

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Best Practices tell us that Judges should meet with the participants regularly and the Judicial interaction should be 3 minutes (regardless of participant compliance)!

NADCP: Adult Drug Court Best Practice Standards, Volume I, p. 21

Translating Drug Court Research into Practice, 2012

Florida Adult Drug Court Best Practice Standards, 2017



How do we use what we know?

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What is Motivational Interviewing (MI)?

“MI is a collaborative, goal-oriented style of communication with particular attention to the language of change. It is designed to strengthen personal motivation for and commitment to a specific goal by eliciting and exploring the person’s own reasons for change within an atmosphere of acceptance and compassion.”

Miller, W.R. & Rollnick, S. (2013) *Motivational Interviewing: Helping people to change* (3rd Edition). Guilford Press.



COURT AS THEATER

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- Sanctions and Incentives



How to Form Initial and Follow-up Questions

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1. Judges must rely on Treatment to keep you updated on each participant's progress and the recent lessons and treatment goals
2. Questions should be related to lessons discussed over the previous 2-4 weeks depending upon the treatment curriculum
3. Use suggested questions from treatment but feel free to modify
4. The lessons provide a goldmine of information to explore

-Cravings

-Goal Setting

-Relationships

-Responsibility

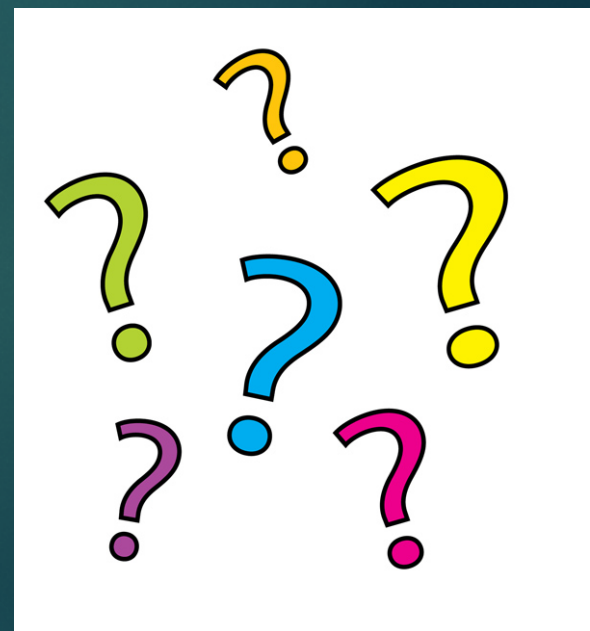
-Helping Others

-Avoiding Situations

-Triggers

-Coping Skills

-Self Care



Examples of Questions:

- ▶ What techniques have helped you stop triggers you encounter from becoming cravings for substances (alcohol or drugs)?
- ▶ How does self-care help in your recovery?
- ▶ What are the benefits of using coping skills in a high risk situation?
- ▶ What are you doing right in the program that is bringing you contentment?
- ▶ Why is sheer willpower not enough for you to remain clean and sober?
- ▶ What are some of the values of the person you chose to trade places with?
- ▶ When have you tried being strong instead of smart? What were the results?
- ▶ How has patience helped you in your recovery? (or asked another way)
- ▶ In what situations can you be too patient?



Examples of Questions, cont'd:

- ▶ What are some important guidelines to follow when making goals?
- ▶ How do you distinguish between things you can control and things you cannot?
- ▶ How does feeling overwhelmed affect your behavior?
- ▶ How does staying positive get you through difficult times?
- ▶ What will help you continue to be honest in your recovery?
- ▶ What problems does lacking self-control cause in life? OR
- ▶ What benefits could you gain from having more self-control?
- ▶ In which ways can guilt be a positive factor in your recovery? OR
- ▶ How can guilt be harmful to your recovery?



Don't Fear Silence

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- ▶ Some participants just need time to recall and formulate
- ▶ Demonstrates patience and understanding on the part of the Judge



Don't burn treatment in court!

Use information from staffing wisely and with nuance.

- Limit direct quotes from treatment
- Always respect confidentiality
- Be aware that court can be traumatic for some participants, don't retraumatize by mishandling sensitive information
- Be careful not to "out" clients regarding sensitive matters



Court Interaction Videos











Anita Grainger

Results/Outcomes you hope to get?

- Clients pay more attention during treatment
- Clients are more alert/engaged during court session
- Deeper, more meaningful conversations with the judge
- Cost savings, reduction in recidivism



DRUG COURTS IN THE U.S. CUTTING CRIME, SAVING MONEY

3,316

treatment
courts
currently in
operation¹

75%

drug court
graduates who
remain arrest
free⁵

\$27

saved on
average for
every dollar
invested²

140,000

Americans
currently being
served by drug
courts¹



Drug courts are the *most successful* criminal justice intervention for addicted offenders. These courts are proven to *save lives, save money and reduce crime*:

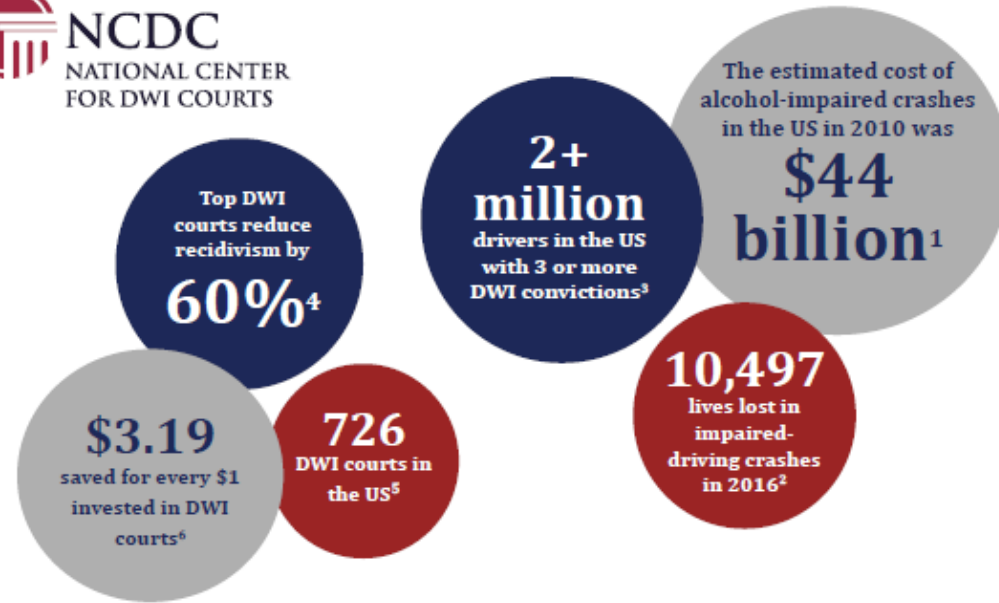
- ✓ Adult drug courts reduce recidivism by as much as 45 percent.⁴
- ✓ 75 percent of drug court graduates remain arrest free, compared to just 30 percent of those released from prisons.⁵
- ✓ Juvenile drug courts reduce recidivism by as much as 40 percent.⁷
- ✓ Sending someone to a drug court instead of state prison can save up to \$13,000 per participant.²
- ✓ Family drug courts reduce the likelihood of re-entry into foster care by two-thirds.⁶
- ✓ Every U.S. state and territory utilizes drug court.¹



NADCP

National Association of
Drug Court Professionals

LEARN MORE: ALLRISE.ORG



IMPAIRED DRIVING EPIDEMIC

There is a disturbing upward trend in the number of annual impaired-driving-related fatalities due to repeat driving while intoxicated (DWI) offenders and drivers with a blood alcohol concentration (BAC) of .15 or higher. However, the criminal justice system's traditional response of incarceration and other punishment does not deter these offenders because it does not address the root cause of the problem: *addiction*.

DWI court participants are *19 times less likely to reoffend*.⁷ DWI courts are *changing the criminal justice system's approach* to impaired driving:

- ✓ Provide intense supervision
- ✓ Demand accountability
- ✓ Provide individualized, long-term treatment
- ✓ Save taxpayers' money
- ✓ Change participants' thinking and behavior
- ✓ Improve public safety

¹ National Center for Statistics and Analysis (2015). Alcohol-impaired driving: 2014 data (Traffic Safety Facts, DOT HS 812 231). Washington, D.C.: National Highway Traffic Safety Administration.

² National Center for Statistics and Analysis (2018). State alcohol-impaired-driving estimates: 2016 data (Traffic Safety Facts, DOT HS 812 402). Washington, D.C.: National Highway Traffic Safety Administration.

³ Mothers Against Drunk Driving (MADD) (2009). New Data Shows Disturbing Number of Repeat Drunk Drivers on America's Roadways.

⁴ Mitchell, O., Wilson, D.B., Eggers, A., & MacKenzie, D.L. (2012). Assessing the effectiveness of drug courts on recidivism: A meta-analysis review of traditional and nontraditional drug courts. *Journal of Criminal Justice*, 40(1).

⁵ National Association of Drug Court Professionals (2015).

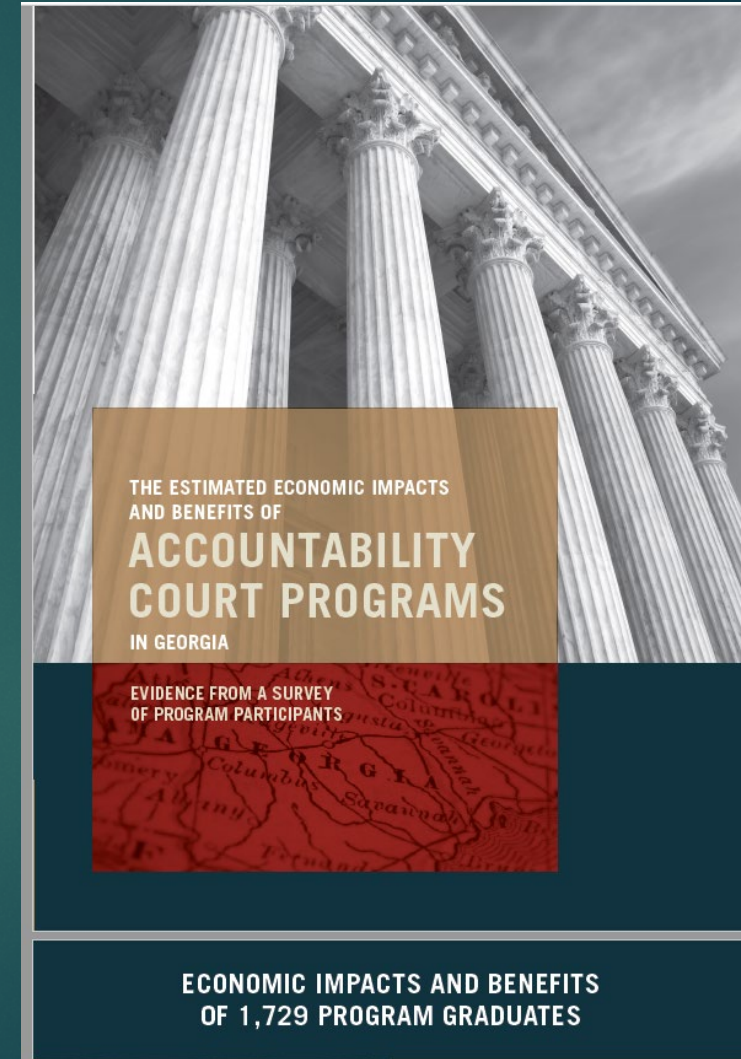
⁶ Carey, S., Harrison, P., Johnson, A., & Zil, C. (2014). *Minnesota DWI Courts: A summary of evaluation findings in nine drug court programs*. Portland: NPC Research.

⁷ Carey, S., Puller, R., & Kistick, K. (2006). *Michigan DWI Courts Outcome Evaluation: Final Report*. Portland: NPC Research.

CACJ AND CJCC 2017 STUDY CONCLUDED:

- ECONOMIC BENEFIT OF \$22,000.00 PER GRADUATE
- APPROPRIATIONS COST TO PROSECUTE AND DEFEND A PROGRAM PARTICIPANT IS \$4,841.00 ANNUALLY WHILE COST TO INCARCERATE A DEFENDANT IS \$20,075.00 ANNUALLY
- REDUCES RECIDIVISM RATES
 - FOR PARTICIPANTS FROM 50% TO 38%
 - FOR GRADUATES TO 15% NATIONALLY

2017 EXECUTIVE SUMMARY





Are there any Questions?

*The care of human life and happiness,
and not their destruction, is the first
and only object of good government.*

THOMAS JEFFERSON

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