



**Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa**

**Testimony before the Charles Colson Task Force on Corrections**

**May 13, 2015**

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

## TABLE OF CONTENTS

Personal Statement	3-4
Introduction	4-5
Mission and Vision	5
Southern Iowa Demographics	5-6
Risk Principle	7-8
Tables	8-11
Needs	12
Employment	12
Responsivity	12-13
Core Correctional Practices	13
Correctional Program Checklist	14
Officer Supervision Style	14-15
Staff Training Aimed at Reducing Rearrest (STARR)	15
Evidence Based Organization	15-16
Previous Correctional Research Conducted in Southern Iowa	16-17
Current Research on Federal Sex Offenders	17-18
Future Research	18-19
Federal Sentencing Reform	19-21

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

### **Personal Statement**

It is indeed one of the highest honors of my 20 year career as a United States Probation Officer to appear before Chairman J.C. Watts, Jr., and the Colson Task Force on Federal Corrections. I grew up the son of a state probation officer who served Iowa for 34 years and taught me to treat defendants and offenders with fairness, firmness and compassion and to look to evidence for guidance in formulating policies and procedures. In 1971, my father testified before the United States Senate Subcommittee on Constitutional Rights chaired by Senator Samuel J. Ervin, Jr., regarding the Des Moines Model Neighborhood Corrections Project. The Project gained national attention as an innovative and effective pretrial release program. In re-reading my father's testimony that was given nearly 44 years ago, I am convinced that the goal of today's federal corrections system should be identical to those conclusions reached so long ago:

“for the large bulk of offenders. . . Institutional commitments can cause more harm than they solve. Institutions tend to isolate offenders from society both physically and psychologically, cutting them off from schools, jobs, families, and other supportive influences and increasing the probability that the label of criminal will be indelibly impressed upon them. The goal of reintegration is likely to be furthered much more readily by working with offenders in the community than by incarceration.”<sup>1</sup>

---

<sup>1</sup> “Challenge of Crime in a Free Society.” A Report by the President's Commission on Law Enforcement and Administration of Justice. Speedy Trial: Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary United States Senate, Ninety-Second Congress, First Session, on S.895, A Bill to Enforce the Sixth Amendment Right to Speedy Trial; July 13, 14, 20 and September 14, 1971.

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

I am here today to specifically report on the faithful dedication of the 44 women and men who comprise the Southern District of Iowa United States Probation and Office.<sup>2</sup> Their efforts are joined by nearly 8,000 staff who work in Federal Probation and Pretrial Offices throughout our country. Federal probation and pretrial staff have dedicated their lives to serving their Courts, defendants and offenders and their communities. I am humbled beyond words to be here today to talk about our work and the bright future ahead for our system.

## **Introduction**

In the next few minutes, I will provide a brief description of our district's mission, vision and key demographics. I will offer insight into how our office is implementing the principles of risk, need and responsivity to achieve the highest measure of recidivism reduction. In addition, I will tell you how our organization conducts original research on its own population to measure outcomes in an effort to achieve continuous improvement. I will propose a framework for future research in the Federal Probation System that is comprehensive in scope and can serve as a beacon for our correctional system. Finally, in conjunction with research efforts by the United States Sentencing Commission started as early as 1989<sup>3</sup>, I will propose much less harmful and much more cost-effective sentences of community supervision for low risk

---

<sup>2</sup>Special thanks to Chief Judge John A. Jarvey, Timothy Heinrichs, Ph.D., Deputy Chief, Daniel Caropreso, Assistant Deputy Chief, Katie Tahja, Assistant Deputy Chief and Alan Drury, Ph.D., Assistant Deputy Chief for their support of our district's EBP journey.

<sup>3</sup>Recidivism and the First Offender: A Component of the Fifteen Year Report on the U.S. Sentencing Commission's Legislative Mandate, May 2004.

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

offenders in the federal system.

## Mission and Vision

Our district’s mission reflects our dedication to “promoting justice and positive change” and our vision reflects our goal to “change lives.” Our management mission puts staff safety, development and innovation as our top priorities.

### MISSION:

**“We serve with integrity, courage, and compassion, promoting justice and positive change.”**



Michael J. Elbert, Ph.D., Chief U.S. Probation Officer  
Southern District of Iowa United States Probation  
110 East Court Avenue, Room 127  
Des Moines, Iowa 50309  
Phone: 515-284-7383 Fax: 515-284-7388  
Cell: 515-418-7074

### VISION:

**Serve the Court  
Support One Another  
Protect the Community  
Change Lives**



**The management team is committed to leading each day by putting staff safety, development and innovation first.**

## S. IA Demographics

The Southern District jurisdiction consists of 47 of 99 counties in Iowa mostly situated below Interstate 80. We have a total of 41 officers and 4 support staff serving three office locations in Des Moines, Davenport and Council Bluffs. In 2014, we supervised over 1,000 post-conviction cases, wrote nearly 300 presentence reports for our Court, and supervised over 200 pretrial defendants. Nearly 82 percent of our caseload are convicted for drugs, weapons and sex offenses compared to 71 percent nationally.

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

Almost 76 percent of our offenders successfully completed post-conviction supervision compared to 73 percent nationally. We released nearly 40 percent of all pretrial defendants compared to 27 percent nationally. Roughly 87 percent of released defendants commit no violations, 97 percent incur no new arrests and 100 percent appear for all proceedings (12 months ending 12/31/2014).

We are a leader in the Federal Probation System for offender employment, consistently ranking #2 or #3 out of 94 districts at 80 percent compared to 71 percent nationally. 85 percent of pretrial defendants in Southern Iowa have a GED or high school diploma compared to 73 percent nationally.

Between 2009 - 2014, Southern Iowa spent on average, each year: \$271, 873 for post-conviction substance abuse treatment and testing, \$145,103 for post-conviction sex offender treatment and monitoring, \$74,032 for post-conviction mental health treatment, and \$50,371 for post-conviction location monitoring.

Between 2009 - 2014, Southern Iowa spent on average, each year: \$101,182 for pretrial substance abuse treatment and testing, \$44,885 for pretrial location monitoring, \$23,341 for pretrial mental health treatment, and \$12,244 for pretrial sex offender treatment.

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

## **Risk Principle**

We have made great progress in implementing the risk principle in Southern Iowa by dedicating the most treatment and supervision resources to our highest risk defendants and offenders. Research strongly supports the risk principle. When intensive treatment resources are applied to the highest risk defendants and offenders, the largest reductions in recidivism occur. The converse and equally challenging portion of the risk principle requires officers to refrain from over treating low risk defendants and offenders as this may lead to poor outcomes for this group.

Our district utilizes the Post-Conviction Risk Assessment (PCRA) developed by the Administrative Office of U.S. Courts and Dr. Christopher Lowenkamp. The original construction sample for the PCRA was roughly 185,000 offenders. It has since been validated on approximately 150,000 offenders via officer assessments.<sup>4</sup>

The PCRA consists of two sections. One section is an assessment by the probation officer consisting of scored items that result in a risk level designation derived from statistically significant predictors of recidivism. The 15 scored items consist of the following: criminal history, education/employment, substance abuse, social networks, and cognitions. Another section is the offender self-report termed the Psychological Inventory of Criminal Thinking Styles (PICTS). It consists of 80 questions developed by Dr. Glenn Walters using data collected from Federal Bureau of Prison inmates. The self-reported

---

<sup>4</sup> Personal communication with Dr. Christopher Lowenkamp May 4, 2015

Michael J. Elbert, Ph.D.  
 Chief U.S. Probation Officer  
 Southern District of Iowa  
 Testimony before the Charles Colson Task Force on Corrections  
 May 13, 2015

results assist clinicians and officers in understanding how an offender thinks which can be valuable for treatment and supervision purposes.<sup>5</sup>

Southern Iowa operates two Reentry Courts for high risk offenders. We believe our Reentry Courts are an extension of the risk principle and maintain that due to the magnitude of crimes among high risk groups, the successful termination of even one out of ten cases may result in the prevention of hundreds of crimes.<sup>6</sup>

SOUTHERN IOWA REVOCATION AND TREATMENT DOLLARS BY PCRA RISK

S. IA Risk Level (4/20/14 - 4/19/15)	% Revoked 5/16/14-5/5/15	Avg. Treatment Dollars
Low (0-5 score): 267 (32.68%)	2/64 cases; 3.1% revoked	\$313.11 (n=141)
Low/Moderate (6-9 score): 367 (44.92%)	7/82 cases; 8.5% revoked	\$364.65 (n=325)
Moderate (10-12 score): 147 (17.99%)	26/47 cases; 55.3% revoked	<b>\$638.06 (n=145)</b>
High (13+ score): 36 (4.41%)	32/43 cases; 74.4% revoked	<b>\$1,851.37 (n=137)</b>

---

<sup>5</sup> Administrative Office of the United States Courts Office of Probation and Pretrial Services: An Overview of the Federal Post-Conviction Risk Assessment September 2011

<sup>6</sup> Chief Judge John A. Jarvey and Judge Stephanie M. Rose have presided the longest over Southern Iowa's Reentry Courts.



Michael J. Elbert, Ph.D.  
 Chief U.S. Probation Officer  
 Southern District of Iowa  
 Testimony before the Charles Colson Task Force on Corrections  
 May 13, 2015

**SOUTHERN IOWA PCRA HOME CONTACTS**  
 (2014 - 817 Offenders; mean PCRA score 6.97)

S. IA Risk Level	(4/20/14 - 4/19/15)	(Avg.) Non-Traditional Contacts (After 5:30 p. m./weekends)	(Avg.) All Contacts
Low (0-5 score): 267 (32.68%)		1.08	2.15 (n=254)
Low/Moderate (6-9 score): 367 (44.92%)		1.24	3.15 (n=1152)
Moderate (10-12 score): 147 (17.99%)		2.24	<b>5.21 (n=855)</b>
High (13+ score): 36 (4.41%)		6.03	<b>15.02 (n=2373)</b>

**SOUTHERN IOWA AVERAGE HOME, COLLATERAL HOME AND OFFICE CONTACTS**  
 (PCRA RISK LEVEL 10/1/13 - 9/30/14)

	Low	Low/Moderate	Moderate	High
Home Vists	2.07	3.23	<b>4.55</b>	<b>13.29</b>
Office	2.38	4.59	<b>6.86</b>	<b>5.30</b>
Collateral Home	1.59	2.14	<b>2.98</b>	<b>6.12</b>

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

SOUTHERN IOWA SEX OFFENDER HOME CONTACTS (4/20/14 - 4/18/15)

Total Home Visits	Traditional Home Visits	Non-Traditional Home Visits
<b>*2,086</b>	1,252	834

Average Traditional Home Visits: 17.38

Average Non-Traditional Home Visits: 6.95

Between 2010 - 2013, Southern Iowa conducted 2,009 home contacts on sex offenders.

\*All sex offender cases are considered “high risk” in Southern Iowa by professional override on the PCRA and through our original research that is ongoing with this population.

---

Our district also utilizes the Pretrial Risk Assessment (PTRA) developed by Dr. Christopher Lowenkamp and the Administrative Office of U.S. Courts. It is comprised of 11 scored items, five of which are related to criminal history. Other scored items include age, education, employment, residence, citizenship status and current drug problems. The PTRA was constructed on approximately 100,000 defendants and has since been validated on two separate occasions, one of which consisted of around 3,500 assessments completed by officers.<sup>7</sup>

---

<sup>7</sup> Personal communication with Dr. Christopher Lowenkamp, May 4, 2015

Michael J. Elbert, Ph.D.  
 Chief U.S. Probation Officer  
 Southern District of Iowa  
 Testimony before the Charles Colson Task Force on Corrections  
 May 13, 2015

**PRETRIAL RISK ASSESSMENT (PTRA) FY 2014 RELEASE RATES  
 WITH VIOLATION RATES BY PTRA SCORE**

**Southern Iowa Release Rate by PTRA**

**National Release Rate by PTRA**

PTRA 1: **74%** 0 FTA, 0 NCA, 8% TV  
 PTR A 2: **53%** 0 FTA, 6% NCA, 16% TV  
 PTR A 3: **36%** 0 FTA, 0 NCA, 23% TV  
 PTR A 4: **28%** 0 FTA, 5% NCA, 27.3% TV  
 PTR A 5: **9%** 0 FTA, 0 NCA, 0 TV

PTRA 1: **88%** 0 FTA, 0 NCA, 4% TV  
 PTR A 2: **67%** 1% FTA, 2% NCA, 10% TV  
 PTR A 3: **46%** 1% FTA, 4% NCA, 19% TV  
 PTR A 4: **28%** 2% FTA, 6% NCA, 28% TV  
 PTR A 5<sup>8</sup>: **14%** 3% FTA, 8% NCA, 35% TV

FTA: Failure to Appear      NCA: New Criminal Arrest      TV: Technical Violation

**SOUTHERN IOWA PRETRIAL TREATMENT EXPENDITURES BY PTRA SCORE  
 10/1/14 - 4/24/15**

PTRA Score	Average Treatment Cost Per Client
1	\$366
2	\$394
3	\$555
4	\$886
5	\$587

<sup>8</sup> Office of Probation and Pretrial Services Federal Pretrial Risk Assessment Scoring Guide. March 27, 2013.

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

## **Needs**

Under the need principle, correctional interventions should target correlates of recidivism known as “crimonogenic needs.” These factors, when changed, are related to reductions in recidivism. Needs most associated with criminal activity include: antisocial personality, antisocial behavioral history, low self-control, pro-criminal attitude, criminal companions, substance abuse, family and marital relationships, education and employment and recreation/leisure.

## **Employment**

Southern Iowa has conducted career fairs for offenders since 2008.<sup>9</sup> On July 16, 2015, Southern Iowa will be hosting a resource fair for offenders that will provide the following resources: career/employment, substance abuse, mental health, medical, parenting, education, housing, and financial.<sup>10</sup>

## **Responsivity**

To increase the likelihood of positive effects on clients behaviors, interventions must be delivered in a mode that is specifically suited to their learning styles and abilities. Responsivity factors are important because they impact how supervision and treatment resources are delivered and matched to clients to

---

<sup>9</sup> Chief Douglas Burris and the Eastern District of Missouri were instrumental in assisting the Southern District of Iowa with its employment program.

<sup>10</sup> Assistant Deputy Chief Daniel Caropreso is coordinating the resource fair.

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

produce the best outcome. The responsivity principle prescribes specific cognitive behavioral strategies as the most effective way to influence change. This modality is designed to alter dysfunctional thinking patterns through

1) explaining what cognitive behavioral therapy is and how it works to replace dysfunctional thinking; 2) role-playing and other scenario exercises to give clients practical experiences on how to apply it, especially in situations that typically trigger dysfunctional responses; 3) pro-social modeling and the proper use of authority by officers and treatment providers.<sup>11</sup>

### **Core Correctional Practices**

To achieve the best outcomes, officers and treatment providers should use a 4:1 system of rewards to punishment. They should develop an effective relationship with correctional clients using a firm but fair approach and communicate in a non-blaming and solution-focused manner. Being honest, mature, enthusiastic, warm, flexible, empathic, respectful and humorous while practicing active listening offers the best chance at better outcomes. Role clarification emphasizing the officer's dual role is also vital.<sup>12</sup>

---

<sup>11</sup> Administrative Office of the United States Courts Office of Probation and Pretrial Services: An Overview of the Federal Post-Conviction Risk Assessment September 2011

<sup>12</sup> Dowden and Andrews 2004, 48(2), 203-214. International Journal of Offender Therapy and Comparative Criminology. The Importance of Staff Practice in Developing Effective Correctional Treatment: A Meta Analytic Review of Core Correctional Practice.

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

## **Correctional Program Checklist (CPC)**

Developed by the University of Cincinnati Corrections Institute, the CPC is a validated instrument that measures whether a correctional program has the capacity to deliver evidence-based interventions and services for offenders. We plan to implement the CPC within our own district beginning in 2015 and at our various contract treatment vendors to determine the effectiveness of each program at reducing recidivism.<sup>13</sup>

## **Officer Supervision Style**

Southern Iowa is very interested in ensuring officers utilize a blended supervision style incorporating interaction styles that meld a firm but fair approach as first described by Klockars (1972) as the “synthetic officer.” Educational efforts aimed at ensuring officers utilize core correctional practices are underway. Recent survey results utilizing the “Dembo” scale indicate that 59 percent of Southern Iowa officers utilize the balanced approach of blending compliance and therapy when working with offenders.<sup>14</sup> Skeem and Manchak (2008) compared the three models of effective supervision and found the synthetic approach predicted better outcomes, the surveillance approach

---

<sup>13</sup> Supervising USPO Justin Song is spearheading the CPC effort for Southern Iowa.

<sup>14</sup> Ricks and Eno Loudon (2014). The Parole Officer Punishment and Reintegrative Orientation Questionnaire.

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

predicted failure and the treatment approach had no effect.<sup>15</sup>

### **Staff Training Aimed at Reducing Re-Arrest (STARR)**

In January 2012, the Southern District of Iowa kicked off a district-wide STARR implementation. The official kick off was preceded by several in-district and out of district Administrative Office sponsored events. STARR is a cognitive-behavioral treatment model that focuses on changing criminal thinking. The underlying premise is if criminal thinking can be changed, future criminal actions can be stopped. The STARR cognitive model teaches officers to incorporate role clarification, appropriate feedback, effective reinforcement and disapproval and effective consequences for noncompliance. Officers practice STARR skills in officer triads and officer interactions with offenders are taped and assessed on their effectiveness at using the model.<sup>16</sup>

### **Evidence Based Organization**

Our district is using the best available empirical evidence to inform our programs, policies and procedures. We wholeheartedly believe in our Administrative Office's goal to become an "outcome based organization" and have heeded this call with research conducted on our own federal defendant and

---

<sup>15</sup> Skeem and Manchak 2008: 47(3), 220-247. Journal of Offender Rehabilitation. Back to the Future: From Klockars' Model of Effective Supervision to Evidence-Based Practice in Probation.

<sup>16</sup>Supervising USPO Andrea Neumann is the coordinator of Southern Iowa's STARR program.

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

offender populations. We believe that aggregate data is important but limited with respect to case-level detail. Therefore, we subscribe to a district-level analysis led by local researchers who can ensure both quantitative and qualitative data are gathered and analyzed.

### **Previous Correctional Research Conducted in Southern Iowa**

Southern Iowa published a study on drug testing that resulted in many districts adopting procedures that allowed for the detection of techniques by post-conviction offenders attempting to manipulate test results.<sup>17</sup>

Southern Iowa has conducted recidivism research on its own population of 177 post-conviction offenders (Elbert, 2004).<sup>18</sup> Findings revealed correlates most predictive of recidivism were unemployment, drug use during supervision, prior revocation, gender (males), and whether intermediate sanctions were imposed.

Southern Iowa also reviewed its early termination practices in 2006 and found only 9/109 (8 percent) of offenders who had been terminated early from supervision by our Court had been rearrested during a 36 month follow-up. In

---

<sup>17</sup> Elbert 1997: 61(4) 3-10. Federal Probation. The Use of Creatinine and Specific Measurement to Combat Urine Test Dilution.

<sup>18</sup> Elbert (2004). The Correlates of Supervised Release Outcomes in a Federal Jurisdiction: A Comparison of Offenders Who Were Revoked and Successfully Terminated Under the United States Sentencing Guidelines from 1998-2002.



Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

comparison, 35/99 (35 percent) of full-term offenders and 23/32 (72 percent) of revoked offenders had been rearrested during the 36 month follow-up (Elbert, 2008).<sup>19</sup> This study was also replicated by the Administrative Office of U.S. Courts.

Southern Iowa and the Administrative Office of U.S. Courts also assessed its pretrial release and supervision program (VanNostrand, 2010).<sup>20</sup> The review found Southern Iowa's use of alternatives to detention increased pretrial release rates by 15 percent while increasing court appearance and decreasing technical violations and revocations. The efforts to release more defendants decreased the costs associated with unnecessary detention by \$1.7 million dollars.

### **Current Research on Federal Sex Offenders**

In September 2014, the Southern District of Iowa worked with the Administrative Office to hire Dr. Matt Delisi, Iowa State University, as an expert consultant for the purpose of conducting original research on sex offenders in our district.<sup>21</sup> Dr. Delisi has examined 225 Southern Iowa sex offenders who were supervised in our district over the last five years. A critically important finding included the high risk nature of this population as evidenced by their multiple prior victims regardless of the original offense of

---

<sup>19</sup>Elbert 2008 32(2), 56-59. Early Termination from Supervision. Perspectives Journal of the American Probation and Parole Association.

<sup>20</sup> VanNostrand (2010). Alternatives to Pretrial Detention; Southern District of Iowa.

<sup>21</sup> Assistant Deputy Chief Alan Drury, Ph.D., was the principle architect of the contract.

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

conviction. Among active sex offender cases, nearly 70 percent admitted to a contact sexual abuse victim during the polygraph. Those sex offenders in the 90<sup>th</sup> percentile admitted to 10 or more hands-on/contact victims and those in the 95<sup>th</sup> percentile admitted to 19 or more hands-on/contact victims. The PCRA, PICTS and RPI were predictive of sex offender revocation in Southern Iowa. It is this type of validation of research efforts that will make the Federal Probation and Pretrial System stronger.

Dr. Delisi concluded that “the United States Probation Officers in this district do an excellent job of accurately assessing risk and providing the appropriate type and number of conditions to effectively supervise these clients.” Many other important findings of this research will serve to inform our district’s policies with regard to this population.

### **Future Research**

Southern Iowa Probation is currently examining over 800 cases in an effort to predict violent offending. This effort is corresponding to the Administrative Office’s development of a violence “trailer” or assessment at the national level. Southern Iowa will also examine general recidivism, pretrial release and supervision and our presentence investigation process in an attempt to utilize the best evidence possible to improve our outcomes.

Outcomes generated in districts should be replicated in other districts by local researchers examining data at the case level, whenever possible. Small, medium and large jurisdictions should be included in ongoing analyses to enable the

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

Federal Probation and Pretrial System to become an outcome based organization. Analyses should be replicated at least every five years on major initiatives such as staff safety, sex offenders, recidivism, and program effectiveness.

### **Federal Sentencing Reform**

In 1980, the population of the Federal Bureau of Prisons was 24,640 inmates. In 2014, the population was 214,149, an increase of 769 percent. In 1987, sentences of pretrial diversion and probation accounted for 68 percent of all cases received for supervision compared to just 19 percent of cases by 2009. Today, probation only sentences account for just 7 percent of all cases compared to 87 percent of incarceration only sentences.<sup>22</sup> In 1988, probation sentences accounted for 29 percent of all sentences.

On December 13, 2010, the Southern District of Iowa authored a letter to the United States Sentencing Commission (USSC) proposing a downward departure for low risk defendants in an effort to increase sentences of probation in the

Federal Probation System. The probation office relied on Administrative Office of U.S. Courts data which revealed that nearly 90 percent of over 97,000 of the lowest risk federal cases supervised between 2006 to 2010 successfully completed their term of supervision. For the same low risk levels in the Southern District of Iowa, 94 percent of all cases successfully completed their term of supervision. Similarly, between 2005 to 2009, the USSC's lowest risk

---

<sup>22</sup> U.S. Sentencing Commission. 2014 Datafile. USSCFY14.

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

cases (CHC I) were sentenced, on average, to 45 months in the Federal Bureau of Prisons. Once they were released, over 8 out of 10 of these offenders successfully completed their term of supervised release.

Most cases in the Federal Probation System are low to low-moderate risk offenders. Of 119,502 federal post-conviction cases with a completed risk assessment, 80 percent are low to low moderate risk.<sup>23</sup> When you consider that nearly 96 percent of low risk offenders and 77 percent of low moderate offenders successfully complete supervision, an argument for less custodial sentencing makes sense.<sup>24</sup>

As early as 1989, the U. S. Sentencing Commission (USSC) studied low risk offenders and found 42 percent who had never been arrested before their federal conviction and were adjudged to be good candidates for probation. However, a high percentage of these defendants needlessly serve sentences of incarceration in the Bureau of Prisons at a cost of over \$29,000 per year compared to just over \$3,000 to be supervised in the community. In 1989, the

USSC identified a research goal “to identify criteria that define a low culpability and low recidivism first offender grouping as a first step in the development of a possible guidelines revision.” The USSC’s analysis at the time underscored “the distinctive characteristics of the proposed first offender groups by

---

<sup>23</sup> Administrative Office of U.S. Courts DSS Standard Report 1199 as of 5/4/2015. Southern Iowa low and low moderate risk offenders account for 78 percent of all cases.

<sup>24</sup> Administrative Office of U.S. Courts DSS Standard Report 1254 as of 5/4/2015.

Michael J. Elbert, Ph.D.  
Chief U.S. Probation Officer  
Southern District of Iowa  
Testimony before the Charles Colson Task Force on Corrections  
May 13, 2015

presenting their consistent patterns of lower recidivism rates.”<sup>25</sup>

As a new officer, one of the first things I read was *Monograph 109: the Supervision of Federal Offenders*. After 20 years, I still recall a striking cautionary note from this publication: “prison is a scarce resource reserved for the most violent offender.” Unfortunately, the use of prison in the federal system is the norm for non-violent, low risk offenders. The time is now to immediately build on the successful efforts of the Administrative Office in developing pretrial and post-conviction risk assessments and turn those efforts toward the development of an actuarial sentencing tool. According to James Bonta (2007), courts in the United States “should consider how they can use the risk/need assessments conducted by probation to further the sentencing goals of rehabilitation and protection of the public in a manner consistent with the least restrictive alternative.”<sup>26</sup> A sentencing assessment can help dramatically increase the use of pretrial diversion and probation sentences for low risk offenders in the federal system.

---

25

Recidivism and the First Offender 2004: A Component of the Fifteen Year Report on the U.S. Sentencing Commission’s Legislative Mandate

<sup>26</sup> Bonta 2007: 519-529. Offender Risk Assessment and Sentencing. *Canadian Journal of Criminology and Criminal Justice*.