

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA : Criminal No. 06-182  
:   
v. :   
: May 22, 2008  
DARRYL M. WOODFORK, :   
:   
Defendant : 9:30 a.m.  
. . . . . : . . . . .

TRANSCRIPT OF MITIGATION HEARING  
BEFORE THE HONORABLE JAMES ROBERTSON  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

## I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
HANS SELVOG, Ph.D.				
By Mr. Seltzer	5	--	19	--
By Ms. Lieber	--	15	--	--
VICTORIA STARBUCK, Ph.D.				
By Mr. Seltzer	20	--	31	--
By Ms. Lieber	--	27	--	--
RICHARD RESTAK, M.D.				
By Mr. Seltzer	33	--	--	--

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**P R O C E E D I N G S**

COURTROOM CLERK: This is criminal case number 06-182, United States of America versus Darryl Woodfork. Michael Brittin and Rachel Lieber for the government, George Allen Dale and Mitchell Seltzer for the defendant.

THE COURT: This is an interesting proceeding. This is a mitigation hearing in a case in which the classic reasons for mitigation hearing no longer applies.

But we are nevertheless -- frankly, reviewing Mr. Woodfork's case makes me wonder why we don't have mitigation hearings like this in every criminal case. Because every criminal defendant or most criminal defendants have histories, backgrounds, pathologies that perhaps should be taken into account as we enter the new world of -- or the old world of 3553(A) and really consider the nature and circumstances of the defendant.

So I will be very interested to hear what the defense has to say. And Mr. Seltzer, are you going to lead this?

MR. SELTZER: Yes, I am, Your Honor.

THE COURT: You may proceed.

MR. SELTZER: Just as a preliminary matter, so the Court -- I don't do anything wrong here. This is a little bit different. I did file the reports. There's a total of three witnesses; each has either a doctorate or a medical doctor degree. The way I wish to proceed, if it's okay with the Court,

1 I will simply show them the exhibits that have already been  
2 filed. I don't think we necessarily have to move them into  
3 evidence. I think they're already on file. Just so they  
4 identify those. And that will probably shorten the number of  
5 questions I need to ask to qualify them, et cetera.

6 So unless any party has an objection to that, I  
7 would --

8 THE COURT: I frankly don't think you have to worry  
9 about qualifications at all. This is almost like written direct  
10 testimony tendering your witnesses for cross, as we sometimes do  
11 in civil cases. So what I would like you to do is to make short  
12 work of the direct, but just focus on, if you will, the bottom  
13 line, the executive summary, and then allow the prosecution to  
14 do whatever cross they want to do.

15 MR. SELTZER: All right. I'll sit down, Your Honor. I  
16 was wondering about that. Because frankly, we do have a lot to  
17 cover. But with that in mind...

18 THE COURT: I'm just urging you to cover it quickly,  
19 that's all. Because you have filed a lot of paper.

20 MR. SELTZER: Right. A lot of it is somebody's  
21 resume'.

22 THE COURT: Go ahead. Do it your way, Mr. Seltzer.  
23 I'm not going to stop you except for lunch and dinner.

24 MR. SELTZER: All right. Dr. Selvog, would you come  
25 forward, please? Will you please take the witness stand?

1 (Oath administered by Courtroom Deputy.)

2 **(HANS SELVOG, Ph.D., DEFENDANT witness, having been duly sworn,**  
3 **testified as follows:)**

4 **DIRECT EXAMINATION**

5 BY MR. SELTZER:

6 Q. Dr. Selvog, would you state your full name for the record  
7 and spell your last name for the reporter, please?

8 A. Yes. Hans Selvog, last name is S-E-L-V-O-G.

9 Q. What is your highest level of education?

10 A. I have a Ph.D. in the field of social work.

11 Q. And do you have a specialty within that area?

12 A. Yes. For the past 25 years I've been practicing in the area  
13 of forensic social work.

14 Q. Is there another term for that area?

15 A. Well, I'm a licensed clinical social worker, and I've also  
16 practiced -- I'm a licensed sex offender treatment provider in  
17 Virginia.

18 Q. Have you ever testified before in any death penalty or other  
19 serious criminal cases?

20 A. Yes, I have.

21 Q. Approximately how many times?

22 A. Approximately 50.

23 Q. Could you just name quickly some of the courts, including  
24 federal courts, that you've testified in?

25 A. Well, I've testified all over the country. Locally I've

1 testified in D.C. Superior Court, also federal courts in  
2 Virginia, both Richmond division and Norfolk division, Southern  
3 District of New York. I've testified in federal courts there,  
4 among others.

5 Q. Have you ever been qualified as what's currently referred to  
6 as a mitigation specialist?

7 A. Yes.

8 Q. And approximately how many times?

9 A. About 50.

10 Q. And just real briefly, can you tell us what a mitigation  
11 specialist does?

12 A. Yeah, a mitigation specialist is a role in death penalty  
13 cases that's defined by the ABA standards for defense attorneys  
14 as someone who is qualified to do background and social history  
15 development to look at how someone was raised, influences on  
16 their development and influences negatively or positively on the  
17 outcome of the current offense.

18 Q. In this case were you retained by myself and Mr. Woodfork to  
19 perform such an investigation?

20 A. Yes.

21 Q. Would you briefly describe what investigation you did  
22 conduct? Again, the Court does have the material so you can be  
23 fairly brief on it.

24 A. Yes. Primarily it consists of two areas. One is just doing  
25 interviews, personal interviews of the family members and the

1 client, and also gathering documents, records, on the client,  
2 and reviewing those, analyzing those.

3 Q. Were there any specific records that you focused on that I  
4 believe were included as an addendum to your report?

5 A. Yes. Primarily the most comprehensive documents were  
6 North Carolina, both medical records and -- I'm sorry, I'm  
7 sorry. Educational records and mental health records from  
8 North Carolina. The school records were beginning in the  
9 6th grade through the 10th grade; they also summarized his D.C.  
10 school career here.

11 And the second set of records are mental health records  
12 that included some of the psychological/educational testing that  
13 was done, and also some of the clinical treatment he received  
14 there in North Carolina.

15 Q. Would you please summarize for the Court the findings you  
16 reached in each individual area?

17 A. Yes, I'll be brief. The first area was -- the first finding  
18 was we learned that leading up to Darryl's mother's pregnancy  
19 with him, there was a very conflictual relationship between she  
20 and her husband. She was under a great deal of stress. There  
21 was a lot of stress around whether or not the husband even  
22 wanted the mother to have the child and wanted her to abort the  
23 child, and there was also a lot of violence occasionally between  
24 the mother and the husband reported by the family.

25 During the actual delivery, she had a brain hemorrhage,

1 and again creating even more stress to her and to her baby.  
2 That was the first critical finding.

3 Second was in his infancy, the separation lingered, and  
4 divorce, and again, there was a lot of stress on the mother;  
5 again, occasions of violence in the home eventually that led to  
6 a divorce. And then Darryl's mother was single, had to find a  
7 way of supporting economically, finding income to support her  
8 infant and her two older children who are eight and nine years  
9 older than Darryl respectively. That was the third finding.

10 Early on in the school records it shows that the fourth  
11 finding was that Darryl had a very difficult time, had some  
12 learning problems in school. He failed the first grade, barely  
13 passed the second grade, and there was noted in the records a  
14 huge number of absences. I think the first time he tried first  
15 grade it was 46 absences, and the second time was like 26  
16 absences. And when the school contacted the mother about these  
17 absences, she was surprised about these absences, like she  
18 wasn't aware of them, but obviously indicated that whatever was  
19 going on, whatever struggles she was having making a living to  
20 support her family, she was not able to get her young child  
21 Darryl to school.

22 Q. So at some point did the family choose to relocate to try to  
23 improve things?

24 A. Yes. When Darryl was in the 6th grade, 12 years old, they  
25 moved to North Carolina to remove him from the difficulty she



1 was having with her teenage son and daughter that were having an  
2 influence on Darryl, which included substance abuse, cocaine and  
3 alcohol abuse among those teenagers, also some criminal behavior  
4 of the older teenage son.

5 Q. What interaction was Darryl having with the older siblings  
6 at that point?

7 A. Well, the record shows he was quite close and in very close  
8 proximity and influenced and exposed to a number of unhealthy  
9 behaviors, including substance abuse, criminal behavior,  
10 behaviors of violence and aggression during those young years.

11 Q. Were there any specific instances that you were able to  
12 chronicle in regards to the substance abuse and alcohol area?

13 A. Yes. Darryl recalled, and his sister confirmed, that when  
14 he would skip school as a six, seven, eight-year-old with his  
15 older teenage siblings, that there would be alcohol, they would  
16 be abusing drugs. There would be alcohol in the home, and he  
17 ingested alcohol and became extremely intoxicated and lost  
18 consciousness because of it at a very young age, which is very  
19 detrimental to one's brain development.

20 Q. Did that happen fairly regularly, as you understand it?

21 A. As I understand it, it happened regularly. I think I  
22 estimated maybe once a month for several years.

23 Q. Was Darryl eventually referred for any testing through the  
24 schools, psychological evaluations and things of that nature, in  
25 North Carolina?

1 A. Yes. Once he got to North Carolina, two years later -- the  
2 family moved around a little bit those two years. They were in  
3 one county and then moved to a second county. They were in  
4 Halifax County and then moved to Roanoke, Rapids City school  
5 district, a different school district, and because of Darryl's  
6 difficulties in school and behavior problems in school, they had  
7 him tested. And the psychological and educational testing  
8 showed that he was in the borderline to mild retarded range in  
9 his cognitive abilities, intellectual abilities, and that that  
10 was a full scale IQ of 71 and a verbal IQ of 68, I believe, or  
11 62.

12 Q. What does a verbal IQ of 62 indicate to you?

13 A. That he was having a number of troubles with communicating,  
14 with talking, with struggling with how to formulate written  
15 expression, writing, things like that.

16 Q. In fact, is it correct or not that 62 would actually be a  
17 full range of impaired, or back in the day it was referred to as  
18 retarded? That's no longer an acceptable term. But as far as  
19 verbal, is that accurate, a 62 would be actually diminished?

20 A. Yes.

21 Q. And that was based on not just one evaluation, but on  
22 several that you included in your report. Is that fair to say?

23 A. That's correct.

24 Q. Now, I guess as a further point, was he put into any kind of  
25 special ed or anything like that that you're aware of?

1 A. Yes. After those -- I'm trying to think of the date. But  
2 after -- I think he was in the 8th grade. After that  
3 educational and psychological testing, it was recommended that  
4 he be put into a special education program, and he was. And he  
5 stayed in that program for the next two years, into the  
6 10th grade.

7 Q. At some point did the family move back to the District of  
8 Columbia?

9 A. Yes. When Darryl was approximately 18, maybe going on 19,  
10 they moved back to Washington, D.C. because of the older  
11 sibling, his older brother's failing health.

12 Q. Can you give us some detail on the brother? I know you did  
13 put quite a lot of detail in the report on that. Can you  
14 briefly summarize the situation that Maurice Woodfork had?

15 A. Yes. Gerald Maurice Woodfork, Junior, just briefly, was a  
16 hemophiliac since age eight or nine, and at some point was  
17 diagnosed with HIV/AIDS as well and had struggled with that most  
18 of his life. He was also behaviorally very troubled,  
19 emotionally very troubled, which may be related to those  
20 diagnoses, or probably was related to those diagnoses. At least  
21 the record indicates that. And had a history of substance  
22 abuse, had a severe cocaine addiction from early teenage years  
23 into his -- up until the time he died. Also with alcohol abuse,  
24 and also had criminal history as a teenager and as an adult.

25 Q. The reporter has asked me to just ask you to slow down just

1 a notch, even though I think we're all getting it. But it's a  
2 little difficult for her.

3 A. Okay.

4 Q. What was Darryl's relationship with his brother during that  
5 period of time?

6 A. Well, Darryl has always had a close relationship, at least  
7 in proximity, for the most part, and spent a lot of time with  
8 his older brother. He cared about his older brother. The  
9 records indicate that he was upset about his older brother's  
10 illnesses, and that his older brother did not take care of  
11 himself and continued to abuse substances.

12 Q. What effect did that have on the family unit, if you can  
13 answer?

14 A. Yes. Again, the record shows clearly that it had quite a  
15 negative effect in the home, the older brother's illnesses and  
16 his substance abuse behaviors. He was aggressive, suicidal at  
17 times, threatening at times. And Darryl, which is consistent  
18 with what all the records say about Darryl, that he was easily  
19 distracted by things in his environment because of his attention  
20 deficit issues and learning issues. And so this had a negative  
21 impact on him.

22 Q. Did the family make any attempt to separate the brother from  
23 the rest of the family to protect it or not?

24 A. Well, they made some attempts along the ways, but they  
25 weren't always successful to do that. But yeah, there were some

1 attempts. I mean, his mother was concerned about him, had him  
2 committed to inpatient substance abuse treatment for I think  
3 several weeks.

4 Q. Around the time of the brother's death, or shortly  
5 thereafter, was there any notable change in Darryl's behavior?

6 A. Yes. That was roughly when Darryl began a serious -- began  
7 to get in serious criminal trouble, committing criminal  
8 offenses.

9 Q. I noticed in preparing your report, and I'm sure previously  
10 you've reviewed quite a few studies, most of them were done by  
11 the Department of Justice dealing with risk factors. Is that  
12 correct?

13 A. That's correct.

14 Q. Could you give us a brief discussion, as you did in your  
15 report, starting with what's called individual risk factors?

16 A. Yes. There was a metaanalysis --

17 THE COURT: Brief discussion sounds like a narrative to  
18 me, Mr. Seltzer. Lead him. Ask him a couple of leading  
19 questions.

20 MR. SELTZER: Okay.

21 BY MR. SELTZER:

22 Q. What were the primary individual risk factors, as you see  
23 them?

24 A. Was the natal and birth stress and problems with the  
25 pregnancy, and the issues going on in the home causing the

1 stress on the mother was one of the significant ones. Also his  
2 learning problems and his diminished cognitive abilities.

3 Q. Was there any effect due to his relationship with his  
4 brother and/or the alcoholism issue?

5 A. Yes, that also was a cause and effect point, that his  
6 siblings had a corruptive influence on his young school years.

7 Q. In a related area, what would you see as the key family risk  
8 factors, again just in outline form?

9 A. Yeah, the family risk factors were the violence between the  
10 mother and father early on, the struggle she had to support the  
11 children on her own, the substance abuse and criminal behavior  
12 of the older siblings in the home.

13 Q. So what do these studies tell you? What is the likely  
14 result of these type of factors? I mean, how does that  
15 contribute to behavior?

16 A. Well, when there are these many factors that I outlined on  
17 my report in an individual's life, it's highly predictive of  
18 later -- the possibility, the high probability of later violence  
19 in a person's life.

20 Q. And to your knowledge, was he ever treated or did he ever  
21 get any kind of training or medication for Attention Deficit  
22 Disorder?

23 A. No, he did not.

24 MR. SELTZER: I'll pass the witness, Your Honor.

25 THE COURT: Thank you, Mr. Seltzer.

**CROSS-EXAMINATION**

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BY MS. LIEBER:

Q. Good morning, sir.

A. Good morning.

Q. In reviewing your report and listening to your testimony, I just have a few follow-up questions for you.

Having gone through all of the various factors that you discussed in that report, I focused at page 18 of your report on the actual bottom line, the summary conclusions that you reached. And what I thought was notable was that you said basically the odds were against Mr. Woodfork. Is that fair to say?

A. Yes.

Q. Okay. And the odds that were against him were the prenatal injuries suffered by his mother, the sort of difficult family circumstances that he had, the polysubstance abuse, some mental health problems, and learning disabilities. Is that a fair sort of encapsulation of --

A. Yes.

Q. At the same time, what you say -- your leading statement in the summary conclusion is that despite the many obstacles that faced Darryl growing up, there were moments where he tried to fit in and become part of society. And that's right, he did?

A. That's correct.

Q. So, for instance, he held a job as a plumber for some time?

1 A. Yes.

2 Q. And he also held a job for an even longer period of time,  
3 working six days a week from 7:00 a.m. to 7:00 p.m. as a tow  
4 truck operator?

5 A. Yes, ma'am.

6 Q. And actually chose to leave that job to take a different tow  
7 truck job?

8 A. Yes, ma'am.

9 Q. And I think he also worked in an auto parts store?

10 A. Yes.

11 Q. And took some community college classes?

12 A. Yes.

13 Q. So even though he did have this sort of background that no  
14 one is challenging or questioning in terms of the very difficult  
15 environment in which he was raised, and the actual physical  
16 injuries, he did show signs of being able to be a productive  
17 member of society for chunks of time?

18 A. Yes, ma'am.

19 Q. And so it's fair to say, sir, isn't it, that regardless of  
20 sort of these truly mitigating factors, with respect to an  
21 ultimate sentence, you're not in any way suggesting that  
22 Mr. Woodfork is not criminally responsible for the murders that  
23 he committed?

24 A. Not in any way.

25 MS. LIEBER: Court's indulgence.



1 THE COURT: Dr. Selvog, let me ask you a couple of  
2 questions --

3 THE WITNESS: Yes, sir.

4 THE COURT: -- that occur to me. What we are  
5 considering, of course, in the case of Mr. Woodfork is what the  
6 sentence has to be for the crime to which he has pleaded guilty.  
7 And the sentencing range, the guidelines range goes up as far as  
8 life in prison.

9 Does your discipline and/or your study comprehend any  
10 predictive conclusions about what might become of a man like  
11 Darryl Woodfork who spends 20, 30 years in prison?

12 THE WITNESS: Yes, sir, I appreciate that question.  
13 I'm aware in the field that most individuals like Darryl who  
14 have committed violent offenses, even who serve long terms of  
15 imprisonment and are eventually released, usually do very well  
16 in recidivism, in terms of violence recidivism is minimal.

17 THE COURT: Is that just a function of age, or does it  
18 have something to do with the particular profile of this  
19 offender?

20 THE WITNESS: Well, it certainly is a function of age,  
21 and it certainly is a profile of this particular offender.  
22 Because as the reports indicated, the evaluations when he was a  
23 child and a teenager, they all recommended structure, and that  
24 he would benefit from structure and a more controlled  
25 environment. And that's what he will receive in the prison

1 setting, and hopefully he would take advantage of some of these  
2 programs.

3 THE COURT: Well, understood that prison is a  
4 structured environment. But I'm asking you to postulate the  
5 return to an unstructured society of somebody with Darryl  
6 Woodfork's psychological profile and mental capabilities, who  
7 has spent all these years in prison. Now what happens?

8 THE WITNESS: Well, in my experience, 25 years or more  
9 in this field, and the individual, Darryl, looking at the  
10 context of the family that he would re-enter, I mean, his older  
11 brother is deceased, no longer a factor, his older sister has  
12 changed dramatically and has made significant changes and  
13 progress in her life to be stable, working jobs, going to  
14 school. The mother now is more stable in her life. They're  
15 living --

16 THE COURT: How old is the mother going to be in  
17 30 years?

18 THE WITNESS: Well, good point, Your Honor.

19 THE COURT: How old is the sister going to be in  
20 30 years?

21 THE WITNESS: Yes. But they'll be changed and stable.

22 So there's no predicting, but I think Darryl would,  
23 given that context, given his own -- the extensive time, he  
24 would have a chance to change and reflect and make something of  
25 his life, which most of the men I've dealt with in the 25 years

1 do. And they establish relationships even in prison that are  
2 very meaningful and very stable once they're released.

3 MR. SELTZER: If I could just ask a quick follow-up,  
4 hopefully to aid the Court on that.

5 **REDIRECT EXAMINATION**

6 BY MR. SELTZER:

7 Q. I know you didn't include this in your report, and hopefully  
8 we'll address this separately, but are you aware whether Darryl  
9 is married or not?

10 A. Well, yes, he is.

11 Q. And does he have young children?

12 A. Yes.

13 Q. And are you aware of what kind of relationship he's  
14 maintained with them both prior to and since he's been  
15 incarcerated? Has he had a positive relationship?

16 A. Yeah, he cares about his children very much.

17 Q. Does that add at all to your equation of a predictor of  
18 ability to re-enter society, albeit in a fairly long period of  
19 time?

20 A. Yes, that contributes positively to his goals while he's in  
21 prison.

22 Q. Okay. Thank you.

23 THE COURT: All right. Dr. Selvog, thank you. I think  
24 that completes your testimony. You may step down, sir.

25 THE WITNESS: Thank you, Your Honor.

1 MR. SELTZER: Your Honor, may I get the next witness  
2 from the witness room?

3 The defense calls Dr. Victoria Starbuck.

4 (Oath administered by Courtroom Deputy.)

5 **(VICTORIA STARBUCK, Ph.D., DEFENDANT witness, having been duly**  
6 **sworn, testified as follows:)**

7 **DIRECT EXAMINATION**

8 BY MR. SELTZER:

9 Q. Dr. Starbuck, would you please just state your name and  
10 spell your last name for the reporter, please?

11 A. Sure. It's Victoria, middle initial N, last name is  
12 Starbuck, S-T-A-R-B-U-C-K.

13 THE COURT: You have the advantage, Ms. Starbuck, of  
14 having a name that every American can spell.

15 MR. SELTZER: She's a 50 percent shareholder, Your  
16 Honor.

17 BY MR. SELTZER:

18 Q. The Court does have your CV, so I won't go into it at  
19 length. But could you just tell us what your highest degree  
20 was, in what area, and also list your post Ph.D. training?

21 A. Yes. I have a Ph.D. in psychology, I did a clinical  
22 residency/internship at the Baltimore Veterans Hospital, and  
23 completed postdoctoral training in clinical psychology from  
24 George Washington University.

25 Q. And are you licensed in any of the local jurisdictions?

1 A. Yes.

2 Q. Which ones are those, please?

3 A. In the District, in Maryland, and Virginia.

4 Q. And have you testified previously as an expert in any  
5 criminal proceedings?

6 A. Yes, I have.

7 Q. Approximately how many times?

8 A. Approximately five times.

9 Q. And which courts were those in, if you recall?

10 A. Three of them in the District and two federal courthouses in  
11 Maryland.

12 Q. Now, in this case you were basically retained by the defense  
13 to do a neuropsychological evaluation of Mr. Woodfork. Is that right?

14 A. Yes.

15 Q. Again, the Court has your report so I won't keep you on  
16 long. But could you just describe first of all the procedure,  
17 the investigation that you followed?

18 A. What I do for the neuropsychological evaluation is basically  
19 to evaluate cognitive functions, including things like level of  
20 intelligence, attention, processing speed, language abilities,  
21 in addition to psychological aspects of functioning, looking for  
22 possible depression or anxiety or other psychological factors.

23 Q. And in the case of Mr. Woodfork specifically, without  
24 listing every test, could you just tell us what type of testing  
25 regimen you conducted and on what occasions?

1 A. I saw Mr. Woodfork on three occasions, two in 2006 and one  
2 in 2007, and conducted a very thorough neuropsychological  
3 evaluation of him, looking at basically his attention, his level  
4 of intelligence, his learning, memory capacities, language  
5 function, central executive function, and various motor tests  
6 and psychological testing.

7 Q. In the area of intelligence, what results and conclusions  
8 did you reach in that area?

9 A. Mr. Woodfork came out with a full scale intelligence score  
10 that is in the borderline range, which is -- the actual number  
11 was 79. That's one step up from the extremely low range, which  
12 is the lowest range of classification.

13 His verbal IQ score is 75, which is also in the  
14 borderline range, and his performance IQ score is 89, which is  
15 in the low average range.

16 Q. And can you just briefly educate us as to -- it seems like  
17 there's a fairly wide gap between the performance IQ and the  
18 other two numbers. What does that indicate?

19 A. There is. That difference between his verbal and  
20 performance IQ is significant, and basically points to his  
21 deficits in verbal processing which were also noted at previous  
22 evaluations that he had as part of his education and other  
23 psychological evaluations, and consistent, generally consistent,  
24 with his performance in school.

25 Q. Are you aware also of -- did he have any -- well, you

1 reviewed some previous reports, previous tests that were done in  
2 North Carolina by various evaluators. Is that correct?

3 A. Yes.

4 Q. One specific one, a Dr. Fuchs?

5 A. Yes.

6 Q. Can you compare your results to those of Dr. Fuchs, and sort  
7 of explain any differences, if there are any?

8 A. At the time Dr. Fuchs saw Darryl, he was considerably  
9 younger - I think it was 1991 - so he was administered a  
10 different form of the intelligence test which would have been  
11 appropriate for his age at that time.

12 His scores came out actually pretty significantly lower  
13 than they did at the time that I saw him, but the overall  
14 pattern was consistent. What I mean by that was that his verbal  
15 IQ was significantly lower than his performance IQ at that time.

16 Q. Now, at that time I think he had a verbal IQ as low as 62.  
17 What would that mean to you?

18 A. 62 is in the extremely low range, which is the lowest range  
19 of classification for intelligence, and would place him at about  
20 the very lowest end of the first or second percentile of the  
21 normal, general population. It's an extremely low score.

22 Q. Okay. Did you perform any tests related to what they call  
23 central executive functioning?

24 A. Yes, I did.

25 Q. Can you just briefly explain to us what central executive

1 functioning means?

2 A. Certainly. Central executive functions are sort of higher  
3 order cognitive abilities that allow us to plan and organize  
4 information that permit mental flexibility and generally monitor  
5 and control our impulses and our behaviors. And the central  
6 executive functions are mediated primarily by the frontal lobes  
7 in the brain.

8 So I did a number of tests to look at central executive  
9 functioning. I did a whole battery of executive function tests.

10 Q. What is the name of that battery of tests?

11 A. It's called the Delis-Kaplan Executive Function System, and  
12 it's a battery that is designed specifically to evaluate  
13 executive functions, very well normed and relatively new.

14 Q. It's commonly called the DKEF?

15 A. The DKEF. Right.

16 Q. Are you aware of how accurate those tests are considered to  
17 be, based on the studies?

18 A. Well, as I said, it's very well normed. The population  
19 where they derive the norms consisted of over a thousand  
20 individuals ranging in age from eight to 89. It's published,  
21 it's very well documented.

22 Q. What were Darryl's results on the DKEF battery and the  
23 related tests?

24 A. Darryl performed in the impaired range on just about every  
25 single measure of central executive functioning that was



1 administered. He demonstrated difficulty with mental  
2 flexibility, planning and organization, concrete responses to  
3 various kinds of verbal tests of executive function, and he also  
4 had difficulty inhibiting his responses on several measures.

5 Q. Would that lead you to draw any conclusions about his  
6 ability to inhibit behavior, specifically negative behaviors?

7 A. Well, that would suggest that he did have difficulty with  
8 response inhibition. I mean, the tests results are  
9 generalizable to some extent.

10 Q. Okay. Did you perform any tests for what's now called ADD,  
11 or Attention Deficit Disorder?

12 A. Yes, I did.

13 Q. Could you just tell us the results of that test?

14 A. Certainly. I did several tests for attention, broadly  
15 speaking, and one test in particular that is often used to  
16 diagnose Attention Deficit Disorder. It's a test that's  
17 administered on the computer, it's called the Conners'  
18 Continuous Performance Test. And Darryl's performance was  
19 impaired in several aspects of attention, but in that test in  
20 particular he demonstrated a classic pattern of results that is  
21 consistent with Attention Deficit Disorder.

22 Q. As far as you know, what's the accuracy rating on those  
23 tests, or the likelihood that they predict ADD?

24 A. It's - well, I don't want to keep saying the same thing -  
25 extremely well normed, well published tests. What the test

1 permits you to do is to compare the person who you're looking at  
2 to the normal population, and also compare them to a population  
3 of specifically diagnosed Attention Deficit Disorder people, and  
4 then compare them again to another population with neurologic  
5 dysfunction. What it does is plot the probability that this  
6 particular person matches one of those three populations.

7           And his profile matched the attention deficit group  
8 with I think 97 percent likelihood. So it was a real match. It  
9 wasn't just a gray area in that case.

10 Q. And you also had a chance to review some of his school  
11 records and interviews and prior psych evals. Is that correct?

12 A. Yes.

13 Q. Were those consistent with a pattern of behavior indicating  
14 Attention Deficit Disorder?

15 A. I thought so, from what I reviewed.

16 Q. And just briefly, what is the relationship between -- is  
17 there a relationship between ADD and the deficits in the central  
18 executive functioning?

19 A. They often do go hand in hand. You can have either  
20 Attention Deficit Disorder or central executive dysfunction, but  
21 very frequently if you've got attention deficit, you will also  
22 manifest at least some symptoms of central executive  
23 dysfunction. Both of those capacities are again mediated by the  
24 frontal lobes in the brain, so it makes some sense that you  
25 often see them together in the same person.

1 Q. Did those in combination have any, in your opinion, specific  
2 effect on ability to inhibit behavior?

3 A. I'm not sure I understand your question there.

4 Q. Well, I think you testified as to the central executive  
5 function and separately as to the ADD. When you look at the  
6 overall picture, shall I say, of Darryl, including the ADD and  
7 the central executive function, does that lead you to any  
8 conclusions as to his ability to inhibit his behavior?

9 A. Yes, it would. I mean, I think he's at a significant  
10 disadvantage in that particular ability because of the Attention  
11 Deficit Disorder and also central executive dysfunction.

12 MR. SELTZER: I'll pass the witness, Your Honor.

13 **CROSS-EXAMINATION**

14 BY MS. LIEBER:

15 Q. Good morning, Dr. Starbuck.

16 A. Good morning.

17 Q. I want to just talk about two basic areas, first  
18 intellectual functioning and then central executive functioning.

19 With respect to his intelligence, you said that his  
20 full scale IQ is 79. Is that right?

21 A. Right.

22 Q. And the next -- and that's considered borderline. Is that  
23 correct?

24 A. Right.

25 Q. Is there a margin of error in IQ testing?

1 A. There is.

2 Q. In other words, like plus or minus one or two points,  
3 something like that?

4 A. Exactly.

5 Q. And is that the margin of error, generally?

6 A. Right off the top of my head, I don't know what the exact  
7 margin would be. And it also depends. You can use different  
8 criterion.

9 Q. So it can vary a little bit?

10 A. Yes.

11 Q. And is 80 considered low average? Is that the next sort of  
12 block?

13 A. Yes, that would be the next block.

14 Q. So it's fair to say that while Mr. Woodfork's full scale  
15 intellectual functioning is below average, it may be that he's  
16 actually at the very low end of low average?

17 A. That's correct.

18 Q. In sort of the broad full scale?

19 A. Well, that would be with respect to his performance IQ, but  
20 not necessarily his full scale IQ.

21 Q. Okay. Well, I guess what I'm trying to get at is the number  
22 79 is awfully close to 80 --

23 A. Right.

24 Q. -- which is the next sort of block in the IQ...

25 A. Classification.

1 Q. Thank you. Classifications.

2 And with respect to central executive functioning, I  
3 was reading your report, and I look on page five - again, as I  
4 did the previous witness, just sort of the bottom line, the  
5 summary and recommendations - and what stood out to me was  
6 you're discussing the suggestion of significant difficulty in  
7 planning, organization, and initiation and disinhibition of  
8 behavior. Do you know anything about the facts of this case?

9 A. I have read backgrounds.

10 Q. Okay. I mean, in terms of the facts of the criminal case.  
11 I'm sorry, not Mr. Woodfork's personal history, but the actual  
12 facts of the crime that we're discussing.

13 A. I'm not -- I mean, I couldn't tell you point for point.

14 Q. Okay. Well, are you aware that he actually -- that  
15 Mr. Woodfork actually got a group of people together, organized  
16 other members of his neighbor to retaliate for a shooting? Are  
17 you aware of that?

18 A. Yes.

19 Q. That Mr. Woodfork himself was the organizer?

20 A. Yes.

21 MR. SELTZER: I'm going to object because that's beyond  
22 her kind of knowledge, and the record is what it is on who  
23 played what roles.

24 THE COURT: I'm going to allow it. I mean, the word  
25 "executive" has something to do with -- I think that's where

1 you're going, Ms. Lieber. Go ahead.

2 MS. LIEBER: It is, Your Honor. Thank you.

3 BY MS. LIEBER:

4 Q. That he sort of marshalled a crew of people together to  
5 retaliate for a shooting, were you aware of that?

6 A. Yes.

7 Q. That's an ability to organize. Is that fair to say?

8 A. Yes.

9 Q. And that in fact over the ensuing 10 days, they planned and  
10 plotted retaliation shootings, and basically staked out various  
11 locations looking to retaliate against some individuals for that  
12 shooting. Are you aware of that?

13 A. No, not particularly. I mean, not specifically.

14 Q. And that throughout the course of those 10 days,  
15 Mr. Woodfork was in contact by phone and in person with a number  
16 of the other people that he was organizing to conduct this  
17 retaliation. Are you aware of that?

18 A. No.

19 Q. Does that affect your assessment that he has difficulty  
20 organizing and planning?

21 A. Well, that's a very good question. I based my assessment on  
22 his test results, which clearly demonstrated difficulty with  
23 planning and organization.

24 Q. I guess just finally, Dr. Starbuck, you talk about  
25 disinhibition of behavior, so it's sort of harder to control his

1 behavior. You're not telling the Court that you think that  
2 Mr. Woodfork is not criminally responsible, are you?

3 A. I've never -- that's not part of my report, and that  
4 wouldn't be something that I would put forth. That's not...

5 MS. LIEBER: Okay. Thanks very much.

6 MR. SELTZER: Just a quick follow-up.

7 THE COURT: Yeah.

8 **REDIRECT EXAMINATION**

9 BY MR. SELTZER:

10 Q. I know you've only briefly seen a criminal outline and don't  
11 know all the facts. If I were to tell you that the series of  
12 events began by one of the victims shooting at some  
13 acquaintances of Mr. Woodfork, do you think his deficits would  
14 affect his ability to restrain from reacting to that?

15 A. That would be consistent with what I found in his testing,  
16 that it's an impulse response control that is lacking.

17 Q. Okay. Thank you.

18 THE COURT: Dr. Starbuck, I am frankly less interested  
19 in what he did and why he did it than in what if anything your  
20 tests tell us about future development of Mr. Woodfork. You  
21 suggest in your report that there's at least the possibility of  
22 frontal lobe dysfunction that has to do with overall executive  
23 functioning. That is, as I understand it from your report, an  
24 organic brain condition. Right?

25 THE WITNESS: Correct.

1 THE COURT: And if it exists, is it correctable over  
2 time? Is it modulated over time? What I'm trying to get at, of  
3 course, is what could we expect of the executive function and  
4 disinhibition of behavior and so forth that you've discussed of  
5 a man who is 25, 30 years older than he is now, after spending  
6 that much time in prison?

7 THE WITNESS: Right. Well, the executive function  
8 deficits are modifiable to some extent with rehabilitation, and  
9 that would involve psychological rehabilitation and cognitive  
10 rehabilitation to implement strategies and organizational  
11 systems so that he's functioning more in a structured fashion.

12 I think that treatment of the Attention Deficit  
13 Disorder, which is very treatable, also would result in a  
14 significant improvement in his impulse control capacity and  
15 general ability to function in a group, in a society.

16 THE COURT: Now -- well, I shouldn't assume anything.  
17 Is the effectiveness of ADD therapy or work on Attention Deficit  
18 Disorder and on the structural things you've talked about, is it  
19 more effective with younger children than it is with adults?

20 THE WITNESS: It really depends on the individual.  
21 It's hard to predict for anyone in particular how well they're  
22 going to respond, but certainly if it's implemented earlier, you  
23 have a better chance of effecting a more permanent response.

24 THE COURT: And what if anything do you know about the  
25 availability of Attention Deficit Disorder therapy or the other



1 sorts of structural development therapies that you've talked  
2 about within the Bureau of Prisons?

3 THE WITNESS: That's outside of my area of knowledge.

4 THE COURT: Thank you very much, Doctor.

5 THE WITNESS: You're welcome.

6 MR. SELTZER: Nothing further. We thank the witness.

7 THE COURT: Dr. Starbuck, thank you. That concludes  
8 your testimony.

9 THE WITNESS: Thank you.

10 MR. SELTZER: If I might get our final witness, Your  
11 Honor.

12 THE COURT: You may.

13 MR. SELTZER: Defense will introduce the testimony of  
14 Dr. Richard Restak.

15 Would you just remain standing to be sworn, Doctor?

16 (Oath administered by Courtroom Deputy.)

17 **(RICHARD RESTAK, M.D., DEFENDANT witness, having been duly**  
18 **sworn, testified as follows:)**

19 **DIRECT EXAMINATION**

20 BY MR. SELTZER:

21 Q. Good morning, Doctor.

22 A. Good morning, Mr. Seltzer.

23 Q. In a loud clear voice, would you please state your name for  
24 the record and just spell your last name, please?

25 A. It's Richard Restak, M.D., last name is R-E-S-T-A-K.

1 Q. The Court has your CV, so I will not go through it in great  
2 detail. Could you just tell us your highest degree and where  
3 you did your internships and residencies?

4 A. My highest degree is a medical degree from Georgetown, and  
5 then I did internship with St. Vincent's Hospital in New York, I  
6 did some psychiatry training at Mt. Sinai New York, at  
7 Georgetown here in Washington, and I completed my neurology  
8 residency at George Washington.

9 Q. And are you board certified in any areas?

10 A. Yes.

11 Q. What areas is that?

12 A. Neurology.

13 Q. Can you give us an estimate of how many publications you've  
14 authored in the area of neurology and related areas?

15 A. Well, I do technical writing, which is probably about 15 or  
16 so. And then I do writing which is more broad based for public;  
17 that's 18 books and maybe 50 or 60 articles about the brain.

18 Q. How many times have you testified before in a court of law?

19 A. I think I testify in the average of about maybe two or  
20 three, maybe three or four times a year.

21 Q. So is it fair to say you've probably testified more than  
22 50 times?

23 A. Yes.

24 Q. Have you ever testified for the prosecution?

25 A. In criminal matters?

1 Q. Yes.

2 A. Yes.

3 Q. Can you give us an example of any time you've testified for  
4 the prosecution?

5 A. The Menendez case in California, I was a prosecution witness  
6 in that.

7 Q. And are there any --

8 THE COURT: The two brothers?

9 THE WITNESS: Yes, Your Honor.

10 BY MR. SELTZER:

11 Q. Are there any prominent cases in this area that come to mind  
12 that you've testified in?

13 A. Any what?

14 Q. Prominent cases.

15 A. For prosecution, a criminal case?

16 Q. For either side.

17 A. Either side? Well, I was involved in the Kansi case, which  
18 was in Virginia. That was the man who shot individuals outside  
19 of the CIA. I was involved with the Riddick Bowe case, which  
20 was in Georgia. That's a charge of, I think it was kidnapping  
21 of the wife. It was a criminal case.

22 Q. And I take it you have reviewed Dr. Starbuck's report and  
23 materials. Correct?

24 A. Correct.

25 Q. And is it fair to say that you were retained in this case to

1 do a neurological medical follow-up of her findings?

2 A. Yes.

3 Q. What did your evaluation in this case consist of, just  
4 briefly?

5 A. It consisted of examining some documents, which included  
6 records from school going back many years, actually. It  
7 consisted of -- I mentioned going over Dr. Starbuck's report, as  
8 well as some previous psychological reports. In addition, I  
9 looked at other materials and carried out an exam myself of  
10 Darryl Woodfork, and then I spoke with his mother and I spoke  
11 with his sister.

12 Q. Were your findings generally consistent with those of  
13 Dr. Starbuck?

14 A. Yes.

15 Q. Do you have any differences that you would like to express?

16 A. No differences. In fact, hers were much more detailed and  
17 lengthy, because mine is a little abbreviated form of what we  
18 call neuropsychological testing. But they dovetail quite a bit.

19 Q. Well, in your opinion, what are Darryl's chief deficits, if  
20 any?

21 A. Attention Deficit Disorder and some evidence of frontal lobe  
22 type of issues.

23 Q. What would those two diagnoses indicate to you as far as his  
24 ability to disinhibit behavior or affect his impulse control?

25 A. Well, it's a circuit between the frontal lobes and other

1 parts of the brain, and it has to do with what we call executive  
2 function, having to do with control, seeing the consequences of  
3 one's actions, being able to inhibit impulses, as you mentioned  
4 before. Everybody gets angry, but the frontal lobe usually  
5 causes us to control our anger.

6 But the biggest issue is the inability to sort of  
7 logically and linearly think through the consequences of one's  
8 actions.

9 Q. In your opinion, and I know you address this briefly in your  
10 report, was there any kind of treatment he could have had  
11 historically or as a teenager that might have helped him improve  
12 his impulse control?

13 A. Yeah, what they call medications for Attention Deficit  
14 Disorder would certainly have been helpful, yes.

15 Q. What about going forward, what would you think -- is there  
16 any treatments that would help him going forward to improve his  
17 impulse control?

18 A. Well, I think it's still time to use medications that would  
19 help that, attention deficit, and also depression. I think some  
20 antidepressant medicines.

21 Q. Do you know whether that type of medication is effective in  
22 adults as well as younger people?

23 A. It is.

24 Q. One last area. I did notice that at your recommendation we  
25 did conduct an MRI exam of his brain.

1 A. Correct.

2 Q. And I believe your report referred to that as negative?

3 A. Correct.

4 Q. Could you explain what that means and what the significance  
5 of that is?

6 A. Yeah, you do the testing because of the indication of the  
7 consecutive head injuries that he had. We have documented at  
8 least four severe -- you know, pretty severe head injuries; hit  
9 with a swing, a bat, things like that. So that, coupled with  
10 his frontal lobe problems that I described earlier, mandated  
11 that we do an MRI.

12 The MRI was normal. That doesn't prove that there  
13 isn't a problem there. It's like a patient who has epilepsy,  
14 for instance. We know they have epilepsy, everybody has  
15 witnessed their seizures, yet you can do consecutive brain wave  
16 tests, EEG's, and they may be all normal. You don't turn around  
17 and say, well, I guess they don't have epilepsy; you just say,  
18 well, it didn't show up on the test. So that's what happened  
19 with this MRI.

20 Q. Okay. Thank you, Doctor. I think the government may have a  
21 few questions.

22 MS. LIEBER: Your Honor, we don't have any questions  
23 for this witness.

24 THE COURT: Dr. Restak, does your evaluation of this  
25 defendant permit you to make any predictions about what might be

1 his profile after 25, 30 years in prison?

2 THE WITNESS: That's a really hard question to answer.  
3 And I don't know whether I'm an expert on being able to answer a  
4 question like that. Could you just be a little more specific,  
5 Your Honor?

6 THE COURT: Well, as I have been saying all morning,  
7 one of the questions that I have to answer in figuring out the  
8 sentence for a man who's already pleaded guilty is I must  
9 consider the history and characteristics of the defendant, but I  
10 also have to consider issues including protection of the public  
11 after his release. And I have to consider what sentences -- if  
12 I had any control over this, and I frankly have very little  
13 control over this, what needed educational and vocational  
14 training during incarceration should be prescribed as part of  
15 the sentence.

16 So I am thinking frankly about the terms and conditions  
17 of incarceration, and I'm considering the future and the  
18 protection of the public if he's released after a long period of  
19 time. Those are what I have to think about.

20 THE WITNESS: Yes, Your Honor. First of all, I think  
21 the medication, as I mentioned; secondly, I didn't go into it in  
22 my testimony, but there is a lot of cultural deprivation, a lot  
23 of lacking knowledge, fund of knowledge, reading/writing skills.  
24 All these things I think will enhance brain function and will  
25 enhance his ability to reason and to see things clearly. I also

1 think his impulse control will improve.

2 The other point I make when I examined him, and I've  
3 seen quite a number of people that have been accused or even  
4 convicted of what he's been who showed no remorse or anything,  
5 and I got the feeling that there was some remorse about it. So  
6 that would be another element.

7 That's about as far as I would want to extrapolate, you  
8 know, two decades ahead.

9 THE COURT: Thank you.

10 Anything further of Dr. Restak?

11 MR. SELTZER: No, Your Honor. We thank the witness.

12 THE COURT: Thank you, sir. You're excused.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Anybody have any more?

15 Anything further, Mr. Seltzer?

16 MR. SELTZER: Your Honor, as the Court is aware, we're  
17 currently scheduled for sentencing a week from tomorrow.

18 THE COURT: Yes.

19 MR. SELTZER: Originally I think we had hoped to have a  
20 two-week gap, and due to various scheduling issues we ended up  
21 this way. I can be ready to go forward, but I think given  
22 everything that's come down today, and also keep in mind that a  
23 big part of the picture is still not before the Court, which is  
24 the 5(k) issue, my preference would be to put it off for say  
25 another week.



1 I'm not trying to delay this, but I would like to have  
2 a chance to digest the government's materials. I frankly don't  
3 know where they're going to land. I expect he'll get a 5(k),  
4 but I don't know where that range is likely to be or what exact  
5 factors.

6 So with all that in mind, I think it would make sense  
7 for us to have an extra week or so, if it wouldn't inconvenience  
8 the Court.

9 THE COURT: The Court is not inconvenienced. As I have  
10 said I think more than once on this occasion, Mr. Woodfork isn't  
11 going anywhere and we need to take all the time we need to take  
12 for this matter.

13 Mr. Brittin, do you have any objection to extending the  
14 sentencing for some period of time?

15 MR. SELTZER: As I said, it doesn't have to be a  
16 lengthy time, and I would defer to Mr. Brittin as to how much  
17 time he needs to get his committee to respond.

18 I would note this is still a sealed matter.

19 THE COURT: Well, then, I would note for the record  
20 that one of the people in the courtroom is the wife of my law  
21 clerk, who is here by special permission of the Court and who is  
22 a student of the subjects that are being testified about. So  
23 without objection, she's here, and she's under the same  
24 constraints that my law clerk is, by the marital privilege or  
25 some other rule that applies. I don't know.

1 MR. SELTZER: We appreciate that. We did have a chance  
2 to briefly speak with her. That's fine.

3 THE COURT: All right.

4 MR. BRITTIN: Judge, the government can be ready next  
5 Friday on the 30th. If Mr. Seltzer feels on behalf of  
6 Mr. Woodfork that he needs some additional time, that would be  
7 fine.

8 On the 12th of June, the 13th, Friday the 13th, I will  
9 not be available. I'll be in another jurisdiction. And I would  
10 ask if it's convenient for the Court, if it is going to continue  
11 the matter, if we could try for a Friday. I have a large number  
12 of other court commitments over the next month so.

13 THE COURT: Yeah, yeah, okay.

14 MR. SELTZER: And I would suggest, if it works for the  
15 Court - and I expect, of course, that that proceeding won't be  
16 as lengthy as this because there will be no testimony - just an  
17 extra week I think will make a big difference. In other words,  
18 the 6th of June.

19 THE COURT: Well, all of us are going to be out in  
20 Pennsylvania romping around at the judicial conference. Friday  
21 the 13th doesn't work.

22 MR. SELTZER: We could meet you out there. No.

23 Well, I could do it at the beginning of the following  
24 week, if Mr. Brittin could live with that.

25 THE COURT: Well, Mr. Brittin wants a Friday, and I'm

1 happy to accommodate him. But the first Friday that I see that  
2 we could do it would be Friday, the 20th of June. Is that too  
3 long?

4 MR. SELTZER: It's acceptable to me, Your Honor. As  
5 you say, I think under the circumstances my client is not being  
6 prejudiced. I would note that I have one -- I would ask that it  
7 perhaps be first thing in the morning. I have a fairly complex  
8 matter in the other courthouse that involves a client that's  
9 charged here and there.

10 But at any rate, if we could do it first on your  
11 calendar on the 20th, I could certainly manage that.

12 MR. BRITTIN: Judge, I would be available. Mr. Dale,  
13 as you probably know, has a very legendary summer vacation  
14 scheduled, and my colleague, Ms. Lieber, is not available on  
15 that day.

16 THE COURT: Mr. Seltzer, why don't we just do it on the  
17 date originally scheduled, May 30th? We can live with that,  
18 can't we?

19 MR. SELTZER: I can live with that. I would just ask  
20 the government to give me a little bit of leeway to review the  
21 report. I mean, frankly, I know you have extensive materials I  
22 was going to summarize in a brief sentencing memo and confer  
23 finally with probation, also.

24 THE COURT: Let's get it done. We're going to stick  
25 with May 30th. Accommodate each other as much as you can.

1 Let's not string this out.

2 MR. SELTZER: That's fine. Thank you, Your Honor.

3 THE COURT: Does either side want to comment,  
4 summarize, discuss, or otherwise verbalize what we've just  
5 heard?

6 MR. SELTZER: I think the Court has articulated some of  
7 its concerns and what you see are the major issues. To the  
8 extent I can, I will try to address those.

9 Again, I'm going to try to get a brief memo into the  
10 Court.

11 THE COURT: Yes, I hope you will focus your sentencing  
12 memorandum and your argument very specifically on 3553(a)(1),  
13 history and characteristics, on 3553(a)(2)(c), protection of the  
14 public, and on 3553(a)(2)(d), needed educational and vocational  
15 training. Those, it seems to me, are the swing issues in  
16 figuring out what is the appropriate 3553 sentence --

17 MR. SELTZER: Yes.

18 THE COURT: -- for this defendant.

19 MR. SELTZER: I think on the history and  
20 characteristics you have quite a bit.

21 THE COURT: I have a lot about that, yes. No question  
22 about it.

23 MR. SELTZER: All right. Thank you.

24 MS. LIEBER: Thank you, Your Honor.

25 THE COURT: Thank you. Counsel are excused.

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(Proceedings adjourned at 10:50 a.m.)

**CERTIFICATE OF OFFICIAL COURT REPORTER**

I, Rebecca Stonestreet, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

\_\_\_\_\_

**SIGNATURE OF COURT REPORTER**

\_\_\_\_\_

**DATE**