

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

IN THE MATTER OF: :
:
Jumbo Seafood Restaurant, Inc.:
t/a Tony Cheng's Seafood : Fact-
Restaurant : Finding
619 H Street, NW : Hearing
Retailer CR - ANC-2C :
License No. 11730 :
Case #14-CMP-00334 :
:
(ABRA Investigative Report :
No. 14-CMP-00334(a) :

January 14, 2015

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

- RUTHANNE MILLER, Chairperson
- NICK ALBERTI, Member
- DONALD BROOKS, Member
- MIKE SILVERSTEIN, Member
- HERMAN JONES, Member
- HECTOR RODRIGUEZ, Member
- JAMES SHORT, Member

ALSO PRESENT:

MARK BRASHEARS, ABRA Investigator

T-A-B-L-E O-F C-O-N-T-E-N-T-S

WITNESS:

Mark Brashears, ABRA Investigator. 5
Andrew Kline, attorney 8

1 P-R-O-C-E-E-D-I-N-G-S

2 3:54 p.m.

3 CHAIRPERSON MILLER: Okay. It's 3:54.

4 We have a 4:00 Fact-Finding Hearing. If the
5 parties are here, we could move forward,
6 otherwise, we can wait if they are not here.

7 Are all the parties here for Tony
8 Cheng's?

9 MR. KLINE: No.

10 CHAIRPERSON MILLER: No? Okay.

11 MR. KLINE: I'm here as counsel.

12 CHAIRPERSON MILLER: We are early. We
13 will wait.

14 MR. KLINE: We are a couple minutes
15 early.

16 CHAIRPERSON MILLER: Okay. All right.
17 So we will recess and come back.

18 MR. KLINE: Thank you.

19 CHAIRPERSON MILLER: Okay.

20 (Whereupon, the above-entitled matter
21 went off the record at 3:55 p.m. and resumed at
22 4:05 p.m.)

1 CHAIRPERSON MILLER: Okay. Good
2 afternoon. This is Case No. 14-CMP-00334, Tony
3 Cheng's Seafood Restaurant located at 619 H
4 Street, N.W., License No. 11730, Retailer CR in
5 ANC-2C.

6 And we are having a Fact-Finding
7 Hearing and as stated on the calendar, it relates
8 to ABRA Investigative Report No. 14-CMP-00334(a).

9 So if the parties or not the parties,
10 if you all would identify yourself for the
11 record?

12 MR. KLINE: Yes.

13 CHAIRPERSON MILLER: Okay.

14 MR. KLINE: Good afternoon. Andrew
15 Kline on behalf of the licensee. Introduce
16 yourself if you would, Mr. Cheng.

17 MR. CHENG: Yes, I'm Tony CY Cheng, C-
18 H-E-N-G.

19 MS. CHENG: Hi. I'm Stephanie Cheng.
20 I'm here on behalf to help with any translation
21 issues involved.

22 CHAIRPERSON MILLER: Translation

1 issues?

2 MS. CHENG: Yes.

3 MR. KLINE: Ms. Cheng is Mr. Cheng's
4 daughter.

5 CHAIRPERSON MILLER: Okay. All right.
6 Thank you. And if we ever are speaking too fast
7 or anything, just let us know, okay?

8 MS. CHENG: Thank you.

9 CHAIRPERSON MILLER: And our
10 Investigator?

11 INVESTIGATOR BRASHEARS: Investigator
12 Mark Brashears, ABRA.

13 CHAIRPERSON MILLER: Okay. So as you
14 were coming in the door, I just identified the
15 case and said that it is related to your
16 Investigative Report No. 14-CMP-00334(a), so I
17 think the way we should proceed is if you can
18 give a summary of whatever of your report and
19 then Mr. Cheng can respond or Mr. Kline. Okay.

20 INVESTIGATOR BRASHEARS: 00334(a)?

21 CHAIRPERSON MILLER: That's what I
22 have before me. Is that not correct?

1 INVESTIGATOR BRASHEARS: Well, that's
2 the supplemental, ma'am, to the original report.

3 CHAIRPERSON MILLER: Okay. So if you
4 want to address both, that would be fine. What
5 are you prepared to do?

6 INVESTIGATOR BRASHEARS: Both, ma'am.

7 CHAIRPERSON MILLER: Okay. Good.
8 Okay.

9 INVESTIGATOR BRASHEARS: Basically, it
10 was a situation that came to my attention that
11 Mr. Cheng had been charged with some things in
12 the U.S. District Court or, you know, there were
13 allegations. So basically, I was instructed by
14 my supervisor to go to the District Courthouse
15 and, basically, collect all the documents that I
16 could, you know, get from the legal proceedings
17 and, basically, summarize those into a report.

18 So essentially, that was the original
19 report, the basic charges. And then the
20 supplemental report (a) was, basically, the Court
21 documents showing that Mr. Cheng was, you know,
22 found guilty and the basic punishment that was

1 given out.

2 CHAIRPERSON MILLER: Okay. So why
3 don't you put on the record what Mr. Cheng was
4 found guilty of.

5 INVESTIGATOR BRASHEARS: Oh, yes,
6 ma'am.

7 CHAIRPERSON MILLER: Okay.

8 INVESTIGATOR BRASHEARS: Basically,
9 the Court documents that I got from the U.S.
10 District Courthouse said that Mr. Anthony CY
11 Cheng, Sr. was found guilty of 18 USC 203(b)(2)
12 and 216(a)(1). And had, basically, stated that
13 Mr. Anthony CY Cheng, Sr. was sentenced to 24
14 months of probation, a \$5,000 fine and 100 hours
15 of community service.

16 CHAIRPERSON MILLER: Okay. So I see
17 that on your report. Do you know what those
18 violations are, refer to, 203(b)(2) and
19 216(a)(1)?

20 INVESTIGATOR BRASHEARS: Yes, ma'am.
21 Let's see, basically, it entails charging him
22 with unauthorized compensation to a public

1 official and criminal information or in violation
2 of -- I'm sorry, in violation of Title 18 USC.

3 CHAIRPERSON MILLER: Okay. So do
4 Board Members have questions for Mr. Brashears
5 right now or you can ask after. Okay. Mr.
6 Short?

7 MEMBER SHORT: Good afternoon,
8 Investigator Brashears. Other than this
9 particular incident that you were sent to
10 investigate, since you have been -- how long have
11 you been an Investigator?

12 INVESTIGATOR BRASHEARS: I have been
13 with ABRA 18 months roughly.

14 MEMBER SHORT: Okay. Have you ever
15 had any or know of any false compensation with
16 the -- at the ABC establishment?

17 INVESTIGATOR BRASHEARS: Nothing that
18 I have personally dealt with, sir. I can only
19 speak to what is in the ABRA history documents.

20 MEMBER SHORT: Thank you very much. I
21 have no further questions.

22 CHAIRPERSON MILLER: Others? Mr.

1 Kline, do you have questions or do you want to
2 just present Mr. Cheng's view?

3 MR. KLINE: No, I think it might be
4 easier if I just present it --

5 CHAIRPERSON MILLER: I think so.

6 MR. KLINE: -- at this point.

7 CHAIRPERSON MILLER: Yes.

8 MR. KLINE: So just so everybody is
9 clear, the condition is for, yes, 18 USC §
10 203(b)(2), which is making an offer of
11 compensation to an officer or employee of the
12 District of Columbia.

13 216(a), that is 18 USC 216(a), which
14 is also referenced in the report and is also
15 referenced in the finding, is actually the
16 penalty section. But it is helpful, because the
17 penalty under 216(a)(1) states "Whoever engages
18 in the conduct constituting the offense, shall be
19 imprisoned for not more than one year or fined in
20 the amount set forth in this title."

21 Now, the reason that that is important
22 is 18 USC 3559, which is not referenced in the

1 report, and probably why you have seen it --
2 would have seen it before, I have a copy of it, I
3 can pass up, is the --

4 CHAIRPERSON MILLER: Okay.

5 MR. KLINE: -- classification of
6 offenses under the U.S. Code and it states that
7 "The imprisonment authorized is one year or less,
8 but more than six months." It is classified as a
9 Class A misdemeanor.

10 Now, we get to our code and
11 regulations and I thought it was important to
12 give that background, so we know where we are
13 under our code and regulations.

14 Now, under the DC Code, which governs
15 licensees, there is mandatory revocation in the
16 event of a conviction of a felony.

17 CHAIRPERSON MILLER: Yes.

18 MR. KLINE: And that's under DC Code
19 § 25-822.3, which I believe is referenced in the
20 Investigator's report. Well, that's not relevant
21 to this situation, because Mr. Cheng has not been
22 convicted of a felony.

1 So that leads us back to 25-301, DC
2 Code § 25-301, which is the general qualification
3 for all applicants.

4 CHAIRPERSON MILLER: Yes.

5 MR. KLINE: And that provides that
6 before issuing, transferring or renewing a
7 license, the Board shall determine that the
8 applicant meets several criteria. The relevant
9 one here is that the applicant has not been
10 convicted of any misdemeanor bearing on fitness
11 for licensure in the five years before the filing
12 of the application.

13 So that's the procedural background.
14 So from a procedural standpoint, this isn't right
15 before you. It certainly would be ripe when the
16 license was up for renewal. We are happy to
17 address it today. We're not happy that we are
18 here, simply because this -- Mr. Cheng found
19 himself in this situation and did end up,
20 unfortunately, pleading to a misdemeanor, which
21 is on record and he certainly is embarrassed and
22 sorry about.

1 But the issue for purposes of the ABC
2 Board is does this misdemeanor conviction bear on
3 fitness for licensure? And speaking to that
4 issue, there are a number of things that I would
5 point to.

6 First, Mr. Cheng has been licensed in
7 the District of Columbia for almost 40 years at
8 one establishment or another. Those of us that
9 have been here a long time and I think that that
10 probably applies to me and most of you sitting in
11 front of me may remember Szechuan Restaurant on H
12 Street, which was --

13 MR. CHENG: I Street.

14 MR. KLINE: I Street, excuse me. I
15 Street which was a well-known sort of or kind of
16 a pioneer of Szechuan cuisine in the District of
17 Columbia that was there for many years. And that
18 dates back almost 40 years.

19 CHAIRPERSON MILLER: Yes.

20 MR. KLINE: We were trying to figure
21 it out before the hearing and we think it is 39
22 years.

1 In addition to that, Mr. Cheng has
2 been licensed at this location for Tony Cheng's
3 Seafood upstairs and Tony Cheng's Mongolian
4 Barbeque downstairs since --

5 MR. CHENG: '86.

6 MR. KLINE: -- '86 or '87. And during
7 that period, the Board will see from it's own
8 records there is very little in the way of
9 violation. Mr. Cheng has been a responsible
10 operator.

11 And this conviction does not in any
12 way relate to his operation as a restaurant. It
13 doesn't relate to employees of ABRA or other
14 officials that were involved in the policing of
15 the restaurant. It doesn't relate to the Health
16 Department. It doesn't relate to ABC
17 Investigators. It was a business venture that
18 was completely separate from the operation of his
19 restaurants.

20 We had forwarded to you letters that
21 were written to Judge Duvall, who had this case
22 and sentenced Mr. Cheng, because they speak to

1 the very same issues that we are here to talk to
2 you about, which is Mr. Cheng's character and his
3 fitness for licensure.

4 And you need not read every word of
5 those letters, but you will see that there are
6 many names that you recognize locally and
7 nationally. You will see a letter from Dick
8 Gregory, who spontaneously wrote in support of
9 Mr. Cheng because of activity that he had been
10 involved in in the District of Columbia.

11 You will also see a letter from former
12 ANC Commissioner Leroy Thorpe. I mean there is
13 just -- it's a striking cross section of
14 individuals in the District of Columbia, who
15 granted they were asked, but they did so and I
16 think you can read the letters, they are genuine
17 and they reflect Mr. Cheng's character and that
18 other than this one blip, he has conducted
19 himself responsibly in his business affairs in
20 the District of Columbia.

21 And this situation in no way is
22 related to the ABC licenses which he currently

1 holds. So that's what we would say with respect
2 to whether this bears on fitness for licensure.
3 We would submit that it does not. We are here
4 for a Fact-Finding and we are happy to answer any
5 questions that the Board might have concerning
6 this matter. Thank you.

7 CHAIRPERSON MILLER: Thank you. Okay.

8 INVESTIGATOR BRASHEARS: Madam Chair?

9 CHAIRPERSON MILLER: Yes?

10 INVESTIGATOR BRASHEARS: May I add
11 something?

12 CHAIRPERSON MILLER: Sure.

13 INVESTIGATOR BRASHEARS: I may have
14 been remiss when I spoke of, you know, being
15 directed to go down and to get the documents and
16 just so that, you know, we were clear, the reason
17 I was directed to do that is because, you know,
18 in my understanding, the original charges were
19 not of a felony nature.

20 CHAIRPERSON MILLER: Right.

21 INVESTIGATOR BRASHEARS: And then were
22 pled to a misdemeanor. So you know, it was, at

1 that point, you know, decided that this should be
2 a matter to go before the Board to be reviewed.
3 Although, you know, it did end up as a
4 misdemeanor.

5 MR. KLINE: We have no quarrel with
6 that. We understand that. That's not an issue.

7 CHAIRPERSON MILLER: Yes, okay.
8 Questions? I haven't read these yet, but my
9 understanding, my guess would be we have some
10 transcripts from the Court proceedings and so I
11 assume in there there is discussion about the
12 nature of the violation and what happened?

13 MR. KLINE: Yes, there is. However,
14 I mean I would point out to the Board that those
15 were preliminary proceedings.

16 CHAIRPERSON MILLER: Okay.

17 MR. KLINE: There was not a trial.
18 One will note that Mr. Cheng was originally
19 charged with four felonies and he was allowed to
20 plead to one misdemeanor. You can draw your own
21 conclusions as to what the proof might have
22 actually shown had the case gone to trial.

1 But as the Board Members know and as
2 we all know, going to trial is a very expensive,
3 risky proposition, so a decision had to be made
4 in terms of a plea offer. And again, I mean, we
5 -- as part of the plea offer, Mr. Cheng was made
6 to take responsibility. So we are not saying
7 that he does not take responsibility.

8 But I just, you know, in terms of
9 reading preliminary proceedings, I would caution
10 against putting too much stock in that, because,
11 remember, Mr. Cheng, as we all do, had the
12 presumption of innocence and his lawyers were not
13 required to put on any evidence of exculpation
14 unless the matter went to trial. And those were
15 preliminary motions which did not reach that
16 level.

17 So I have read those, but I would
18 caution against drawing too many conclusions from
19 reading transcript of --

20 CHAIRPERSON MILLER: Okay.

21 MR. KLINE: -- preliminary
22 proceedings.

1 CHAIRPERSON MILLER: Well, then maybe
2 I'll ask you, because I was just tending to think
3 I shouldn't ask you questions that I can read
4 about, but is this violation just a one time
5 thing or was it a course of conduct?

6 MR. KLINE: It was a one time thing.
7 And if you do read the transcript of the
8 preliminary motions, you will see one of the
9 issues was did the Government act improperly in
10 continuing -- this was a sting operation.

11 CHAIRPERSON MILLER: Yes.

12 MR. KLINE: And there were multiple
13 and repeated efforts to have Mr. Cheng
14 incriminate himself. And one question that was
15 raised appropriately by his attorneys was did
16 they ask too many times? Because there is case
17 law, and I'm not a criminal lawyer and I don't
18 pretend to be --

19 CHAIRPERSON MILLER: Okay.

20 MR. KLINE: -- but I understand that
21 there is case law that the Government can't keep
22 going back to the well when someone has said no,

1 I'm not doing that. And that was an issue based
2 on my reading of the transcript of some of the
3 preliminary motions in terms of wait, a minute,
4 what did the Government do here?

5 I don't -- there is no determination
6 of that. I will again leave the Board to draw
7 its own conclusions based upon the fact that
8 there were originally four felonies charged and
9 the plea was to one single misdemeanor. And I
10 think that speaks volumes in terms of the
11 Government's case and what they had here.

12 Again, he pled. We are not saying he
13 didn't plead and we are not saying that he is not
14 taking responsibility for a misdemeanor, but we
15 just want to make sure that we keep it in context
16 if the Board desires, as it certainly may, to
17 read beyond a finding of guilt on the misdemeanor
18 or plea of guilt on the misdemeanor, if you will.

19 CHAIRPERSON MILLER: Okay. Thank you.
20 And what was the sentence?

21 MR. KLINE: The sentence was 24 months
22 of probation and a \$5,000 fine.

1 CHAIRPERSON MILLER: Okay.

2 MR. CHENG: 100 hours community
3 service.

4 MR. KLINE: Oh, and 100 hours of
5 community service. Forgive me, I left that out.

6 CHAIRPERSON MILLER: So has he started
7 his community service?

8 MS. CHENG: No, not yet.

9 MR. CHENG: Not yet.

10 MS. CHENG: We are still --

11 MR. CHENG: We are still working on
12 that.

13 CHAIRPERSON MILLER: Working on where
14 you are going to do the community service?

15 MS. CHENG: Yes.

16 CHAIRPERSON MILLER: Okay. All right.

17 MEMBER ALBERTI: A quick question?

18 CHAIRPERSON MILLER: Yes, please, yes.

19 MEMBER ALBERTI: A quick question for
20 Mr. Kline.

21 So you -- what was the statute that
22 you stated that the fine is a misdemeanor?

1 MR. KLINE: The statute is 18 United
2 States Code § 3559.

3 MEMBER ALBERTI: Yes, 18-3559?

4 MR. KLINE: 18. The way we do it is
5 18 United States Code.

6 MEMBER ALBERTI: Oh, okay. I gotcha.
7 I gotcha.

8 MR. KLINE: 3559.

9 MEMBER ALBERTI: Okay.

10 MR. KLINE: I can pass up. I can pass
11 mine up if you want to see it.

12 MEMBER ALBERTI: Okay. So does it
13 speak to -- can you provide it?

14 CHAIRPERSON MILLER: Do you want to
15 see it? Yes.

16 MEMBER ALBERTI: Well, I do.

17 CHAIRPERSON MILLER: Sure.

18 MEMBER ALBERTI: Because you spoke
19 about length of sentencing. Does it talk about
20 level of penalty?

21 MR. KLINE: No. It's not -- it's
22 actually not length of sentencing. It's the

1 sentence that is authorized. So that was why I
2 first --

3 MEMBER ALBERTI: Oh, I understand. I
4 understand. The maximum sentence that is --

5 MR. KLINE: Exactly.

6 MEMBER ALBERTI: Right. So does it
7 talk about -- I understand that piece, but does
8 it talk about monetary?

9 MR. KLINE: No. The classification --
10 it's funny, because I have had to do some reading
11 on this in the last couple of days and it's
12 something that I knew intuitively, but didn't
13 really know the details of until I read about it.

14 MEMBER ALBERTI: I understand.

15 MR. KLINE: All right. The
16 classification of crimes into felony and
17 misdemeanor dates way back to Common Law. And
18 there really wasn't any fixed line other than a
19 felony is a major crime and a misdemeanor is a
20 minor crime. That was codified under Federal Law
21 in § 3559, which says -- which provides
22 sentencing classification of offenses. And it

1 speaks only to the time of incarceration.

2 It doesn't speak to the amount of fine
3 or the amount of community service, because fines
4 and community service are a relatively recent
5 invention of the criminal justice system, whereas
6 imprisonment/incarceration goes back hundreds if
7 not more years in terms of punishment in place.

8 MEMBER ALBERTI: Okay. Thank you.

9 CHAIRPERSON MILLER: Okay. Any other
10 questions? Mr. Short?

11 MEMBER SHORT: I would just really
12 like to make a statement. Going over this and
13 here in the record, Mr. Cheng is a person I have
14 known indirectly for many years when I was in the
15 Government. And I have read a lot of these
16 letters from community leaders, persons who had
17 their lives changed because of his benevolence
18 and I would just like to go on record as saying
19 that his business and his participation in the
20 greater Washington, D.C. has been exemplary and
21 I'll use that personally as a Board Member in my
22 deliberation.

1 But I'm surprised that he was caught
2 up in the sting, but we all know everybody wears
3 a colored glass, so I would just like to make
4 that statement on my behalf to the Board Members
5 and to Mr. Cheng and their attorney.

6 MR. KLINE: Thank you for that, Mr.
7 Short.

8 CHAIRPERSON MILLER: Thank you. Okay.
9 Anything else? Okay. So I don't think there is
10 really any action before us, at this point, we
11 just wanted to follow-up and find out a little
12 bit more about what happened.

13 Okay. Thank you very much.

14 MR. KLINE: Great. Thank you.

15 MR. CHENG: Thank you.

16 CHAIRPERSON MILLER: Okay.

17 MR. CHENG: Thank you.

18 (Whereupon, the Fact-Finding Hearing
19 in the above-entitled matter was concluded at
20 4:27 p.m.)
21
22

A

\$5,000 7:14 19:22
ABC 8:16 12:1 13:16
 14:22
above-entitled 3:20
 24:19
ABRA 1:10,22 2:3 4:8
 5:12 8:13,19 13:13
act 18:9
action 24:10
activity 14:9
add 15:10
addition 13:1
address 6:4 11:17
affairs 14:19
afternoon 4:2,14 8:7
ALBERTI 1:18 20:17,19
 21:3,6,9,12,16,18
 22:3,6,14 23:8
Alcoholic 1:2,14,14
allegations 6:13
allowed 16:19
amount 9:20 23:2,3
ANC 14:12
ANC-2C 1:8 4:5
Andrew 2:4 4:14
answer 15:4
Anthony 7:10,13
applicant 11:8,9
applicants 11:3
application 11:12
applies 12:10
appropriately 18:15
asked 14:15
assume 16:11
attention 6:10
attorney 2:4 24:5
attorneys 18:15
authorized 10:7 22:1

B

back 3:17 11:1 12:18
 18:22 22:17 23:6
background 10:12
 11:13
Barbeque 13:4
based 19:1,7
basic 6:19,22
basically 6:9,13,15,17
 6:20 7:8,12,21
bear 12:2
bearing 11:10
bears 15:2
behalf 4:15,20 24:4
believe 10:19
benevolence 23:17
Beverage 1:2,14,14
beyond 19:17

bit 24:12
blip 14:18
Board 1:2,14 8:4 11:7
 12:2 13:7 15:5 16:2
 16:14 17:1 19:6,16
 23:21 24:4
Brashears 1:22 2:3
 5:11,12,20 6:1,6,9 7:5
 7:8,20 8:4,8,12,17
 15:8,10,13,21
BROOKS 1:19
Building 1:15
business 13:17 14:19
 23:19

C

C 4:17
C-O-N-T-E-N-T-S 2:1
calendar 4:7
case 1:9 4:2 5:15 13:21
 16:22 18:16,21 19:11
caught 24:1
caution 17:9,18
certainly 11:15,21
 19:16
Chair 15:8
Chairperson 1:15,18
 3:3,10,12,16,19 4:1
 4:13,22 5:5,9,13,21
 6:3,7 7:2,7,16 8:3,22
 9:5,7 10:4,17 11:4
 12:19 15:7,9,12,20
 16:7,16 17:20 18:1,11
 18:19 19:19 20:1,6,13
 20:16,18 21:14,17
 23:9 24:8,16
changed 23:17
character 14:2,17
charged 6:11 16:19
 19:8
charges 6:19 15:18
charging 7:21
Cheng 4:16,17,17,19,19
 5:2,3,8,19 6:11,21 7:3
 7:11,13 10:21 11:18
 12:6,13 13:1,5,9,22
 14:9 16:18 17:5,11
 18:13 20:2,8,9,10,11
 20:15 23:13 24:5,15
 24:17
Cheng's 1:6 3:8 4:3 5:3
 9:2 13:2,3 14:2,17
Class 10:9
classification 10:5 22:9
 22:16,22
classified 10:8
clear 9:9 15:16
code 10:6,10,13,14,18

11:2 21:2,5
codified 22:20
collect 6:15
colored 24:3
Columbia 1:1 9:12 12:7
 12:17 14:10,14,20
come 3:17
coming 5:14
Commissioner 14:12
Common 22:17
community 7:15 20:2,5
 20:7,14 23:3,4,16
compensation 7:22
 8:15 9:11
completely 13:18
concerning 15:5
concluded 24:19
conclusions 16:21
 17:18 19:7
condition 9:9
conduct 9:18 18:5
conducted 14:18
constituting 9:18
context 19:15
continuing 18:10
Control 1:2,14,14
convicted 10:22 11:10
conviction 10:16 12:2
 13:11
copy 10:2
correct 5:22
counsel 3:11
couple 3:14 22:11
course 18:5
Court 6:12,20 7:9 16:10
Courthouse 6:14 7:10
CR 1:8 4:4
crime 22:19,20
crimes 22:16
criminal 8:1 18:17 23:5
criteria 11:8
cross 14:13
cuisine 12:16
currently 14:22
CY 4:17 7:10,13

D

D.C 1:15 23:20
dates 12:18 22:17
daughter 5:4
days 22:11
DC 10:14,18 11:1
dealt 8:18
decided 16:1
decision 17:3
deliberation 23:22
Department 13:16
desires 19:16

details 22:13
determination 19:5
determine 11:7
Dick 14:7
directed 15:15,17
discussion 16:11
District 1:1 6:12,14
 7:10 9:12 12:7,16
 14:10,14,20
documents 6:15,21 7:9
 8:19 15:15
doing 19:1
DONALD 1:19
door 5:14
downstairs 13:4
draw 16:20 19:6
drawing 17:18
Duvall 13:21

E

early 3:12,15
easier 9:4
efforts 18:13
embarrassed 11:21
employee 9:11
employees 13:13
engages 9:17
entails 7:21
essentially 6:18
establishment 8:16
 12:8
event 10:16
everybody 9:8 24:2
evidence 17:13
Exactly 22:5
exculpation 17:13
excuse 12:14
exemplary 23:20
expensive 17:2

F

fact 1:6 19:7
Fact-Finding 3:4 4:6
 15:4 24:18
false 8:15
fast 5:6
Federal 22:20
felonies 16:19 19:8
felony 10:16,22 15:19
 22:16,19
figure 12:20
filing 11:11
find 24:11
finding 1:7 9:15 19:17
fine 6:4 7:14 19:22
 20:22 23:2
fined 9:19
finis 23:3

first 12:6 22:2
fitness 11:10 12:3 14:3
 15:2
five 11:11
fixed 22:18
follow-up 24:11
Forgive 20:5
former 14:11
forth 9:20
forward 3:5
forwarded 13:20
found 6:22 7:4,11 11:18
four 16:19 19:8
front 12:11
funny 22:10
further 8:21

G

general 11:2
genuine 14:16
give 5:18 10:12
given 7:1
glass 24:3
go 6:14 15:15 16:2
 23:18
goes 23:6
going 17:2 18:22 20:14
 23:12
Good 4:1,14 6:7 8:7
gotcha 21:6,7
Government 18:9,21
 19:4 23:15
Government's 19:11
governs 10:14
granted 14:15
Great 24:14
greater 23:20
Gregory 14:8
guess 16:9
guilt 19:17,18
guilty 6:22 7:4,11

H

H 1:7 4:3 12:11
H-E-N-G 4:18
happened 16:12 24:12
happy 11:16,17 15:4
Health 13:15
hearing 1:7,14 3:4 4:7
 12:21 24:18
HECTOR 1:20
help 4:20
helpful 9:16
HERMAN 1:20
Hi 4:19
history 8:19
holds 15:1
hours 7:14 20:2,4

hundreds 23:6

I

identified 5:14
identify 4:10
important 9:21 10:11
imprisoned 9:19
imprisonment 10:7
imprisonment/incarc...
 23:6
improperly 18:9
incarceration 23:1
incident 8:9
incriminate 18:14
indirectly 23:14
individuals 14:14
information 8:1
innocence 17:12
instructed 6:13
Introduce 4:15
intuitively 22:12
invention 23:5
investigate 8:10
Investigative 1:10 4:8
 5:16
Investigator 1:22 2:3
 5:10,11,11,20 6:1,6,9
 7:5,8,20 8:8,11,12,17
 15:8,10,13,21
Investigator's 10:20
Investigators 13:17
involved 4:21 13:14
 14:10
issue 12:1,4 16:6 19:1
issues 4:21 5:1 14:1
 18:9
issuing 11:6

J

JAMES 1:21
January 1:12
JONES 1:20
Judge 13:21
Jumbo 1:6
justice 23:5

K

keep 18:21 19:15
kind 12:15
Kline 2:4 3:9,11,14,18
 4:12,14,15 5:3,19 9:1
 9:3,6,8 10:5,18 11:5
 12:14,20 13:6 16:5,13
 16:17 17:21 18:6,12
 18:20 19:21 20:4,20
 21:1,4,8,10,21 22:5,9
 22:15 24:6,14
knew 22:12

know 5:7 6:12,16,21
 7:17 8:15 10:12 15:14
 15:16,17,22 16:1,3
 17:1,2,8 22:13 24:2
known 23:14

L

law 18:17,21 22:17,20
lawyer 18:17
lawyers 17:12
leaders 23:16
leads 11:1
leave 19:6
left 20:5
legal 6:16
length 21:19,22
Leroy 14:12
Let's 7:21
letter 14:7,11
letters 13:20 14:5,16
 23:16
level 17:16 21:20
license 1:8 4:4 11:7,16
licensed 12:6 13:2
licensee 4:15
licensees 10:15
licenses 14:22
licensure 11:11 12:3
 14:3 15:2
line 22:18
little 13:8 24:11
lives 23:17
locally 14:6
located 4:3
location 13:2
long 8:10 12:9
lot 23:15

M

ma'am 6:2,6 7:6,20
Madam 15:8
major 22:19
making 9:10
mandatory 10:15
Mark 1:22 2:3 5:12
matter 1:5 3:20 15:6
 16:2 17:14 24:19
maximum 22:4
mean 14:12 16:14 17:4
MEETING 1:3
meets 11:8
Member 1:18,19,19,20
 1:20,21 8:7,14,20
 20:17,19 21:3,6,9,12
 21:16,18 22:3,6,14
 23:8,11,21
Members 8:4 17:1 24:4
met 1:14

MIKE 1:19
Miller 1:16,18 3:3,10,12
 3:16,19 4:1,13,22 5:5
 5:9,13,21 6:3,7 7:2,7
 7:16 8:3,22 9:5,7 10:4
 10:17 11:4 12:19 15:7
 15:9,12,20 16:7,16
 17:20 18:1,11,19
 19:19 20:1,6,13,16,18
 21:14,17 23:9 24:8,16
mine 21:11
minor 22:20
minute 19:3
minutes 3:14
misdemeanor 10:9
 11:10,20 12:2 15:22
 16:4,20 19:9,14,17,18
 20:22 22:17,19
monetary 22:8
Mongolian 13:3
months 7:14 8:13 10:8
 19:21
motions 17:15 18:8
 19:3
move 3:5
multiple 18:12

N

N.W 1:15 4:4
names 14:6
nationally 14:7
nature 15:19 16:12
need 14:4
NICK 1:18
note 16:18
number 12:4
NW 1:7

O

O-F 2:1
offense 9:18
offenses 10:6 22:22
offer 9:10 17:4,5
officer 9:11
official 8:1
officials 13:14
Oh 7:5 20:4 21:6 22:3
okay 3:3,10,16,19 4:1
 4:13 5:5,7,13,19 6:3,7
 6:8 7:2,7,16 8:3,5,14
 10:4 15:7 16:7,16
 17:20 18:19 19:19
 20:1,16 21:6,9,12
 23:8,9 24:8,9,13,16
operation 13:12,18
 18:10
operator 13:10
original 6:2,18 15:18

originally 16:18 19:8

P

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

3:1
p.m 3:2,21,22 24:20
part 17:5
participation 23:19
particular 8:9
parties 3:5,7 4:9,9
pass 10:3 21:10,10
penalty 9:16,17 21:20
period 13:7
person 23:13
personally 8:18 23:21
persons 23:16
piece 22:7
pioneer 12:16
place 23:7
plea 17:4,5 19:9,18
plead 16:20 19:13
pleading 11:20
please 20:18
pled 15:22 19:12
point 9:6 12:5 16:1,14
 24:10
policing 13:14
preliminary 16:15 17:9
 17:15,21 18:8 19:3
prepared 6:5
present 1:17,22 9:2,4
presiding 1:16
presumption 17:12
pretend 18:18
probably 10:1 12:10
probation 7:14 19:22
procedural 11:13,14
proceed 5:17
proceedings 6:16
 16:10,15 17:9,22
proof 16:21
proposition 17:3
provide 21:13
provides 11:5 22:21
public 7:22
punishment 6:22 23:7
purposes 12:1
put 7:3 17:13
putting 17:10

Q

qualification 11:2
quarrel 16:5
question 18:14 20:17
 20:19
questions 8:4,21 9:1
 15:5 16:8 18:3 23:10
quick 20:17,19

R

raised 18:15
reach 17:15
read 14:4,16 16:8 17:17
 18:3,7 19:17 22:13
 23:15
reading 17:9,19 19:2
 22:10
really 22:13,18 23:11
 24:10
reason 9:21 15:16
recess 3:17
recognize 14:6
record 3:21 4:11 7:3
 11:21 23:13,18
records 13:8
Reeves 1:15
refer 7:18
referenced 9:14,15,22
 10:19
reflect 14:17
regulations 10:11,13
relate 13:12,13,15,16
related 5:15 14:22
relates 4:7
relatively 23:4
relevant 10:20 11:8
remember 12:11 17:11
remiss 15:14
renewal 11:16
renewing 11:6
repeated 18:13
report 1:10 4:8 5:16,18
 6:2,17,19,20 7:17
 9:14 10:1,20
required 17:13
respect 15:1
respond 5:19
responsibility 17:6,7
 19:14
responsible 13:9
responsibly 14:19
restaurant 1:6,7 4:3
 12:11 13:12,15
restaurants 13:19
resumed 3:21
Retailer 1:8 4:4
reviewed 16:2
revocation 10:15
right 3:16 5:5 8:5 11:14
 15:20 20:16 22:6,15
ripe 11:15
risky 17:3
RODRIGUEZ 1:20
Room 1:15
roughly 8:13
Ruthanne 1:16,18

S

saying 17:6 19:12,13
 23:18
says 22:21
Seafood 1:6,6 4:3 13:3
section 9:16 14:13
see 7:16,21 13:7 14:5,7
 14:11 18:8 21:11,15
seen 10:1,2
sent 8:9
sentence 19:20,21 22:1
 22:4
sentenced 7:13 13:22
sentencing 21:19,22
 22:22
separate 13:18
service 7:15 20:3,5,7
 20:14 23:3,4
set 9:20
Short 1:21 8:6,7,14,20
 23:10,11 24:7
showing 6:21
shown 16:22
SILVERSTEIN 1:19
simply 11:18
single 19:9
sir 8:18
sitting 12:10
situation 6:10 10:21
 11:19 14:21
six 10:8
sorry 8:2 11:22
sort 12:15
speak 8:19 13:22 21:13
 23:2
speaking 5:6 12:3
speaks 19:10 23:1
spoke 15:14 21:18
spontaneously 14:8
Sr 7:11,13
standpoint 11:14
started 20:6
stated 4:7 7:12 20:22
statement 23:12 24:4
states 9:17 10:6 21:2,5
statute 20:21 21:1
Stephanie 4:19
sting 18:10 24:2
stock 17:10
Street 1:7,15 4:4 12:12
 12:13,14,15
striking 14:13
submit 15:3
Suite 1:15
summarize 6:17
summary 5:18
supervisor 6:14
supplemental 6:2,20

support 14:8
sure 15:12 19:15 21:17
surprised 24:1
system 23:5
Szechuan 12:11,16

T

T-A-B-L-E 2:1
t/a 1:6
take 17:6,7
talk 14:1 21:19 22:7,8
tending 18:2
terms 17:4,8 19:3,10
 23:7
Thank 3:18 5:6,8 8:20
 15:6,7 19:19 23:8
 24:6,8,13,14,15,17
thing 18:5,6
things 6:11 12:4
think 5:17 9:3,5 12:9,21
 14:16 18:2 19:10 24:9
Thorpe 14:12
thought 10:11
time 12:9 18:4,6 23:1
times 18:16
title 8:2 9:20
today 11:17
Tony 1:6 3:7 4:2,17
 13:2,3
transcript 17:19 18:7
 19:2
transcripts 16:10
transferring 11:6
translation 4:20,22
trial 16:17,22 17:2,14
trying 12:20

U

U.S 6:12 7:9 10:6
unauthorized 7:22
understand 16:6 18:20
 22:3,4,7,14
understanding 15:18
 16:9
unfortunately 11:20
United 21:1,5
upstairs 13:3
USC 7:11 8:2 9:9,13,22
use 23:21

V

venture 13:17
view 9:2
violation 8:1,2 13:9
 16:12 18:4
violations 7:18
volumes 19:10

W	3559 9:22 21:2,8 22:21 39 12:21
wait 3:6,13 19:3 want 6:4 9:1 19:15 21:11,14 wanted 24:11 Washington 1:15 23:20 wasn't 22:18 way 5:17 13:8,12 14:21 21:4 22:17 We're 11:17 wears 24:2 well-known 12:15 went 3:21 17:14 WITNESS 2:2 word 14:4 working 20:11,13 written 13:21 wrote 14:8	4
	4:00 3:4 4:05 3:22 4:27 24:20 40 12:7,18 400S 1:15
X	5
	5 2:3
Y	6
year 9:19 10:7 years 11:11 12:7,17,18 12:22 23:7,14	619 1:7 4:3
Z	7
	8
0	8 2:4 86 13:5,6 87 13:6
00334(a) 5:20	
1	
100 7:14 20:2,4 11730 1:8 4:4 14 1:12 14-CMP-00334 1:9 4:2 14-CMP-00334(a) 1:10 4:8 5:16 14th 1:15 18 7:11 8:2,13 9:9,13,22 21:1,4,5 18-3559 21:3	
2	
2000 1:15 20009 1:15 2015 1:12 203(b)(2) 7:11,18 9:10 216(a) 9:13,13 216(a)(1) 7:12,19 9:17 24 7:13 19:21 25-301 11:1,2 25-822.3 10:19	
3	
3:54 3:2,3 3:55 3:21	