

ALSO PRESENT:

BERNARD C. DIETZ, Licensee Counsel

WYNDAM DEMISSIE, Licensee

AIDA LEONE, Licensee

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

11:05 a.m.

CHAIRPERSON ANDERSON: Good morning.

We are back on the record. Our next case is a Fact-Finding Hearing on Ayda, Inc. also known as Brown Street Market, License No. 110967.

Would the parties, please, approach and identify themselves for the record, please?

MR. DIETZ: Good morning. I'm Bernard C. Dietz. I represent the applicant.

CHAIRPERSON ANDERSON: Mr. Dietz.

MR. DEMISSIE: Good morning. I'm Wyndam Demissie and I'm the landlord for Brown Street Market.

CHAIRPERSON ANDERSON: You are who?

MR. DEMISSIE: Landlord.

CHAIRPERSON ANDERSON: So who do you represent, Mr. Dietz?

MR. DIETZ: I represent Ms. Aida Leone, the LLC.

CHAIRPERSON ANDERSON: And who is she?

MR. DIETZ: She is my wife. She is on

1 the -- she is looking for apartment. She has
2 been with me --

3 CHAIRPERSON ANDERSON: No, but I
4 thought you said you were the landlord.

5 MR. DEMISSIE: Yeah, we are the
6 landlord and the business owner, too, husband and
7 wife, so --

8 CHAIRPERSON ANDERSON: All right.

9 MR. DIETZ: We are here to explain.

10 CHAIRPERSON ANDERSON: All right.

11 Well, why don't we wait until she comes.

12 MR. DIETZ: Okay.

13 CHAIRPERSON ANDERSON: Since she is
14 the one who wrote the letter. So why don't you
15 guys -- we are off the record. You can let me
16 know when she comes, because we will --

17 MR. DEMISSIE: Okay.

18 CHAIRPERSON ANDERSON: -- since she is
19 the one who wrote the letter, then we will
20 dispose of this case once she gets here.

21 MR. DEMISSIE: All right.

22 CHAIRPERSON ANDERSON: So you guys can

1 let us know when she gets here.

2 (Whereupon, the above-entitled matter
3 went off the record at 11:06 a.m. and resumed at
4 11:09 a.m.)

5 CHAIRPERSON ANDERSON: All right. We
6 are back on the record. Would the parties -- you
7 can come back up, sir.

8 Would the parties, please, pull up a
9 chair. You can pull the chair that is there up
10 to the table. Would the parties, please,
11 identify themselves for the record, please?

12 MR. DIETZ: I'm Bernard C. Dietz
13 representing the applicant.

14 CHAIRPERSON ANDERSON: The applicant,
15 who is the applicant? And what is the applicant
16 applying for?

17 MR. DIETZ: Okay. The applicant is
18 Ayda, Inc., A-Y-D-A, Inc. t/a Brown Street
19 Market.

20 CHAIRPERSON ANDERSON: So who owns
21 Ayda? Who are the -- Inc. -- so what's Ayda,
22 Inc.?

1 MR. DIETZ: Ayda, Inc. is an LLC that
2 owns the real estate.

3 CHAIRPERSON ANDERSON: All right. So
4 who is --

5 MR. DIETZ: Ms. A-I-D-A --

6 CHAIRPERSON ANDERSON: So who are the
7 -- so who is the officer or who is the managing
8 member of the -- I need a person.

9 MR. DIETZ: All right. Okay. Mr.
10 Demissie, Wyndam Demissie is the managing member
11 of Ayda, LLC. They own -- that's the owner of
12 the real estate.

13 CHAIRPERSON ANDERSON: Okay. All
14 right.

15 MR. DIETZ: And Ms. Leone is the
16 president of Ayda, Inc., which is the business
17 owner, the tenant.

18 CHAIRPERSON ANDERSON: All right. So
19 put your name on the sign-in sheet, please, and
20 please identify yourself for the record.

21 MS. LEONE: Aida Leone.

22 CHAIRPERSON ANDERSON: Okay.

1 MS. LEONE: So I manage the Ayda, Inc.

2 CHAIRPERSON ANDERSON: All right. And
3 you, sir?

4 MR. DEMISSIE: Wyndam Demissie. I'm
5 the Ayda, LLC.

6 CHAIRPERSON ANDERSON: I didn't hear
7 what your last name is, sir?

8 MR. DEMISSIE: Demissie, D, like
9 David, E-M-I-S-S-I-E.

10 CHAIRPERSON ANDERSON: D-E-M-I-S-S-I-
11 E.

12 MR. DEMISSIE: Yes.

13 CHAIRPERSON ANDERSON: All right. And
14 okay, so what is it that this Board is being
15 asked to do?

16 MR. DIETZ: We are asking this Board
17 to consider an application for a license at that
18 premises. Now, what happened --

19 CHAIRPERSON ANDERSON: What type of
20 license at this location?

21 MR. DIETZ: Okay. If you could just
22 bear with me. This business, Brown Street

1 Market, was a retail grocery store with a Class B
2 License for a number of years.

3 CHAIRPERSON ANDERSON: All right.

4 MR. DIETZ: And which his family
5 operated the business. The business was
6 transferred to a third-party and the third-party
7 applied for and got a Class A License to replace
8 the Class B License for the premises. That
9 tenant defaulted on his lease and the Class A
10 License went into safekeeping status.

11 In the meanwhile, the former owner of
12 the property was suing my client as a guarantor
13 on the lease and they reached a settlement where
14 my client would purchase the real estate on the
15 condition that he could reopen the business.

16 At that time, I applied for a Retail
17 Class A License, because that's what was there at
18 the time. And what we were told is that the
19 zoning does not permit that.

20 Along with that, along with my
21 application, I filed the zoning certificate that
22 indicated that we could have a retail

1 establishment at that address, a retail grocery
2 store.

3 What we are asking the Board to do is
4 to consider our request to apply for a Class B
5 License at that premises. We have been in touch
6 with the ANC. We have the support of the ANC
7 with this request.

8 CHAIRPERSON ANDERSON: But I -- all
9 right.

10 MR. DIETZ: That's it in a nutshell.

11 CHAIRPERSON ANDERSON: All right.
12 It's my understanding that you cannot apply for a
13 Class B. It had a Class B License, which was --
14 because it's in a residential neighborhood/area,
15 I think this license was lapsed, I guess, more
16 than two years.

17 It is my understanding that this
18 establishment is not eligible for a Class B
19 License. There is really nothing that this
20 Agency can do in providing a Class B License.
21 You can't apply for it, because for operation of
22 law, we can't give it.

1 So there is really nothing this Board
2 can do as far as the Class B License, as far as a
3 Class B License, because you cannot have that
4 type of license in that zone, because it's a
5 residential area.

6 You are applying for a new license and
7 so you cannot, unless there is some exception in
8 the Zoning Law, there is really nothing that this
9 Board can do.

10 As far as the Class A License that is
11 there, then that license is in safekeeping under
12 another owner. And so whatever agreement that
13 you want to -- if you can go with that owner, buy
14 the license from them, and I'm not giving legal
15 advice, but to get them to transfer the license
16 to you at that location, but there is really
17 nothing that this Board can do.

18 MR. DIETZ: Well, you just told me
19 what we wanted to hear.

20 CHAIRPERSON ANDERSON: Well, it's not
21 -- I mean, I'm just saying there --

22 MR. DIETZ: So we can look to the

1 Class A License?

2 CHAIRPERSON ANDERSON: I'm not giving
3 legal advice. What I'm saying is that you can't
4 apply for a Class B License in this
5 establishment. There is a Class A License that
6 is under -- that is in safekeeping with another
7 owner. And whether or not those parties can ask
8 for it to be transferred to them and you apply
9 for the -- you apply, but there is an A License
10 in safekeeping for this address that is owned by
11 some other person.

12 MR. DIETZ: Yeah, so that will work.

13 CHAIRPERSON ANDERSON: I'm not -- I
14 don't know, sir. I'm just saying to you that I'm
15 just stating the facts. I'm not telling you what
16 can or can't be done. All I'm saying is that
17 there is -- a Class B License is not applicable.
18 There is a Class A License at the location that
19 is in safekeeping under some other entity. And
20 we are not involved in it, because there is
21 nothing this Board can do as --

22 MEMBER ALBERTI: May I? May I?

1 CHAIRPERSON ANDERSON: Just a minute,
2 Mr. Alberti. There is not much this Board can do
3 as far as to get involved in all of that.

4 MR. DIETZ: All right. But that Class
5 A License --

6 MEMBER ALBERTI: That class very
7 clearly -- and I think you will understand this,
8 and you will see more before this Court, the
9 Class A License exists. It is not in jeopardy.
10 It is in safekeeping. There is nothing in this
11 currently that puts that license in jeopardy.

12 Whoever owns that license at any point
13 in time can ask for it to come out of
14 safekeeping.

15 MR. DIETZ: Right.

16 MEMBER ALBERTI: My understanding is
17 that your current client doesn't own that
18 license, but that's not our concern. The bottom
19 line is whoever owns the license, at any point in
20 time, can ask for it to come out of safekeeping.

21 MR. DIETZ: Okay. Because see the way
22 that would work is if we did that, then we could

1 enter into a voluntary agreement with the
2 neighborhood.

3 MEMBER ALBERTI: Yeah. And --

4 MR. DIETZ: It could work.

5 MEMBER ALBERTI: -- that license in
6 safekeeping could be transferred to a new owner.

7 MR. DIETZ: Well, thank you very much.
8 You provided exactly the information --

9 CHAIRPERSON ANDERSON: All right.

10 MR. DIETZ: -- we were looking for.
11 Thank you.

12 MR. DEMISSIE: May I say something?

13 CHAIRPERSON ANDERSON: Yes, sir?

14 MR. DEMISSIE: Okay. What I was told
15 is I can get the Class A License to get from the
16 guy, whoever get in safekeeping are keeping from
17 to present. But I was informed that I cannot
18 transfer it because it was closed for a year and
19 a half or two years.

20 CHAIRPERSON ANDERSON: That's a B.

21 MR. DEMISSIE: It's an A License, too.

22 CHAIRPERSON ANDERSON: That's the B.

1 MR. DEMISSIE: That's what I was told.

2 CHAIRPERSON ANDERSON: That was --

3 MEMBER ALBERTI: The A License is not
4 in jeopardy. The A License you can activate the
5 A License and Mr. Dietz can explain to you how to
6 activate it.

7 MR. DEMISSIE: Thank you. It's not
8 what I was told there.

9 MEMBER ALBERTI: I understand.

10 MR. DEMISSIE: I was told --

11 MEMBER ALBERTI: I understand.

12 Hopefully this clears it up.

13 MR. DEMISSIE: Yes.

14 MEMBER ALBERTI: Because rest assured,
15 the A License is not currently in jeopardy, there
16 is no reason that we see, at this point in time.
17 It can be reactivated and Mr. Dietz can tell you
18 what you need to do to do that. You have a very
19 capable lawyer.

20 MR. DEMISSIE: Okay. The lady was
21 behind and she say --

22 MEMBER ALBERTI: There may just have

1 been a misunderstanding.

2 MR. DEMISSIE: Okay. Thank you.

3 MEMBER ALBERTI: So all right.

4 MR. DIETZ: That's so much.

5 MEMBER ALBERTI: All right.

6 CHAIRPERSON ANDERSON: Hold on. No,
7 all right, hold on. All right. All right. The
8 location is 3320 Brown Street, N.W. is a
9 residential area. And it's my understanding from
10 licensing that no -- an A or B cannot be issued
11 for that address.

12 And the reason why an A or a B cannot
13 be issued for this address is because the license
14 has not been -- no license has been in operation
15 at this address for two years. And that is the
16 exception, because it is a residential area.

17 If it's a residential area, and the
18 license was issued and it's in continuous
19 operation, then it could have been --

20 MR. DIETZ: Grandfathered.

21 CHAIRPERSON ANDERSON: -- operated.

22 It could have operated. However, because the

1 license has not been used, because the A or the B
2 has not been operational for two years, by
3 operation of law a new license cannot operate at
4 that address.

5 MR. DEMISSIE: Yes. So if that was
6 the reason, our meeting today to you guys why
7 it's not operating for the last two years. So
8 you guys -- I mean, I was listening to you, so--

9 CHAIRPERSON ANDERSON: But I'm saying
10 that's not --

11 MR. DEMISSIE: I got what you said.

12 CHAIRPERSON ANDERSON: But that's not
13 an issue that we can solve now. I mean, the
14 bottom line is that you can apply for a license,
15 but we will say based on operation of law, I
16 mean, but you can apply for the license, sir, but
17 I'm saying two different things.

18 It's not -- I don't -- this Agency
19 cannot -- we can't -- the law says, it's my
20 understand that, I have not read it, but this is
21 information I have been told, that if the license
22 is not -- has not operated for two years, because

1 it's a residential area, that a new license
2 cannot -- there can be no license at that
3 location, because it has not been operating.

4 MR. DEMISSIE: Yes.

5 CHAIRPERSON ANDERSON: So I don't --
6 from what I'm being told, there is no exception
7 to say -- so you are going to give me a reason
8 why it hasn't been operating for the past two
9 years. And from what I'm being told, that is
10 irrelevant. It has not been operating, so
11 because it has not been operating, so therefore,
12 by operation of law, because you are in a
13 residential area, you cannot have that license,
14 because that license should not even had been
15 there anyway and that in a residential area.

16 MR. DEMISSIE: Even though the
17 neighbors want, call the commissioners want it to
18 come there?

19 CHAIRPERSON ANDERSON: It's not up to
20 us. So you would have to go back to the City
21 Council or zoning that wrote the law that says
22 that you cannot have this license in this area.

1 Okay. So it's not up to us.

2 MR. DEMISSIE: Okay.

3 CHAIRPERSON ANDERSON: It's not up to
4 us whether or not we can approve it or not.

5 MR. DEMISSIE: Thank you. What I get
6 from the zoning is it's up to you, because they
7 give me a certificate and if you go by zoning,
8 you cannot get a deli license for that location.

9 CHAIRPERSON ANDERSON: You can't get
10 what?

11 MR. DEMISSIE: You cannot get a deli
12 license for residential zoning.

13 CHAIRPERSON ANDERSON: A what?

14 MR. DEMISSIE: Deli means like a cafe
15 or something to cook food. You cannot do it.

16 MEMBER SHORT: Deli he is saying.

17 CHAIRPERSON ANDERSON: Oh, you mean a
18 deli.

19 MR. DEMISSIE: Yes.

20 CHAIRPERSON ANDERSON: Yeah.

21 MR. DEMISSIE: You cannot do it by
22 zoning.

1 CHAIRPERSON ANDERSON: Right.

2 MR. DEMISSIE: But I was at zoning.

3 I got a deli license. It's up to DCRA to give me
4 the certificate. Now, up to the Board to give
5 me, my almost more than 20 years that license was
6 there, the license I was told. I believe we are
7 working with the ANCs, because I own the
8 Shrimpboat. The Shrimpboat when I open it, I was
9 about to do fast food or something, but I worked
10 with the community.

11 I am just telling you what I have been
12 doing. And they was telling me those people are
13 the ones to decide. The zoning doesn't. I gave
14 you already certificate, you can do retail. You
15 can do deli. About ABRA, I can't control these
16 things.

17 CHAIRPERSON ANDERSON: All right. Did
18 you --

19 MR. DEMISSIE: It's up to you guys.

20 CHAIRPERSON ANDERSON: All right.

21 Have you applied for a license from this
22 establishment, from ABRA?

1 MR. DEMISSIE: Yes, I apply.

2 CHAIRPERSON ANDERSON: And you applied
3 for a license and the Agency denied the license?

4 MR. DEMISSIE: No. First they approve
5 it, because I submit the zoning certificate.

6 After that, they told me to provide some
7 documents in the middle. They told me oh, this
8 is an RF-1. It was -- you guys was here, submit
9 it here. And they told me to submit additional
10 document like C of O, basic license and other
11 stuff.

12 Then finally she said oh, look at the
13 zoning RF-1. I give you already the zoning
14 certificate in the first place. Waiting on RF-1.

15 CHAIRPERSON ANDERSON: Let's be in
16 recess for a couple of minutes.

17 (Whereupon, off the record for a
18 recess.)

19 CHAIRPERSON ANDERSON: Have a seat,
20 please, and introduce yourself for the record.

21 MS. JACKSON: I'm Karen Jackson, the
22 licensing office of the Licensing Division.

1 CHAIRPERSON ANDERSON: Ms. Jackson,
2 what, if anything, do you know about this
3 establishment, Brown Street Market, and this
4 location?

5 MS. JACKSON: Okay. So Brown Street
6 Market does have a zoning certificate from the --
7 they have a Certificate of Occupancy that states
8 that they can operate a market. However, it is
9 the law, ABRA, in our law book that it's a
10 Residential Zone and no license has operating
11 there for less than two years or more than two
12 years, then we cannot license them for a
13 Residential Zone.

14 So they had a license in that
15 location, but at some point, they stopped
16 operating more than two years. And at that
17 point, we cannot put a license back in that
18 location. So they had one before, I think it was
19 a B License.

20 MR. DEMISSIE: Yes. For more than 20
21 years there was a B License.

22 MS. JACKSON: So once they stop

1 operating and it was past the two year statute,
2 we cannot put that license back there because of
3 the zone. But they can operate as a market.

4 CHAIRPERSON ANDERSON: They just
5 cannot sell alcohol?

6 MS. JACKSON: They cannot sell
7 alcohol.

8 CHAIRPERSON ANDERSON: Any -- do you
9 need any other clarification, sir?

10 MR. DEMISSIE: I mean this -- I have
11 been hearing this before I got here, so I think
12 maybe I don't understand it right. The reason I
13 was coming was you guys up to this point, there
14 were not exception, you guys can do that. That
15 was the reason I was explaining why it's not
16 opening, because I wasn't owning that place for
17 the last three years.

18 I mean, that place I know to have
19 somebody who reads the letter we write. I'm a
20 very good businessman. I own different things,
21 but I was helping my good store manager to help
22 his life. I rent the place as a grantor for him.

1 And I was experienced, because that guy don't pay
2 the rent. The landlord sue me for \$200,000.

3 To make that happen, I buy the space.
4 That was the place it's not open. It's not our
5 fault. It was whoever is there to help him, we
6 have been doing. I was explaining in the letter.
7 But if there is no exception, that was the reason
8 -- you are the one who told me write a letter for
9 the Board. They may have the right to exception,
10 because this license was there for 20 plus years.
11 You may get it, it's up to the Board. That was
12 the reason I came.

13 But the lawyer she already explain for
14 me. I was not --

15 CHAIRPERSON ANDERSON: And I don't --
16 and we cannot make an exception to the law, sir.
17 This is what the law says.

18 MR. DEMISSIE: Okay.

19 CHAIRPERSON ANDERSON: If the license
20 was -- if the license had operated --

21 MS. JACKSON: Within --

22 CHAIRPERSON ANDERSON: -- for one day

1 within the past two years, then one could have
2 said that this license was in operation on
3 January 1, 2000 -- it was -- it had operated, so
4 therefore it hadn't left for longer than two
5 years. This license has lapsed for longer than
6 two years. And so by operation of law, this
7 Agency does not have the authority to grant a
8 license for that address.

9 So although there is an A License that
10 is in safekeeping, whoever owns that license
11 cannot operate at this location. They would have
12 to transfer the license somewhere else. But this
13 location -- based on the fact that no license has
14 operated at this location for two years, that no
15 -- an A or a B cannot be issued by operation of
16 law.

17 MR. DEMISSIE: When did the law
18 change? Why you give the liquor license if it's
19 not allowed?

20 CHAIRPERSON ANDERSON: What, sir?

21 MR. DEMISSIE: Why you give liquor
22 license if it is out of control? You guys are

1 the one who approve it, yes? I'm just asking
2 you.

3 CHAIRPERSON ANDERSON: Because there
4 is an operating -- well --

5 MR. DEMISSIE: I informed you give
6 liquor within like before like three years.

7 CHAIRPERSON ANDERSON: There was
8 probably some -- well, this is the issue, sir,
9 okay? Maybe it was an error for the license to
10 be issued. However, if this business -- it's
11 irrelevant.

12 The problem that you have today is
13 that this -- they have a license. The license
14 has not been in use for two years. And the law
15 says that if it -- because it's a residential
16 area, if it has not been in use for two years, a
17 new license cannot be issued.

18 So that's what it says. So if the
19 issue is not that, okay, yes, you have the
20 license, but why has this license not operated?
21 We have this every time we have folks who come to
22 us and I'll give you an analogy.

1 We have folks come to us asking us to
2 keep in safekeeping and they keep the license in
3 safekeeping for four, five, six, seven, eight
4 years and we are saying to them, why is it you
5 are not operating this license? We are going to
6 cancel the license, because why -- and these are
7 for licenses that can operate in these areas.

8 And we are saying to them, we are not
9 going to give you -- we are not going to keep it
10 in safekeeping forever, because you need to
11 utilize the license.

12 The problem you have, sir, is that
13 there was a license there and whoever owned the
14 license for the past two years has not used the
15 license. And because the license has not been
16 used for the past two years, that is why no new
17 license can be issued for this location, because
18 it is in a Residential Zone.

19 MR. DIETZ: Excuse me. If I apply to
20 the BZA for an exception, and I get an exception
21 at the BZA, would this Board entertain a license?

22 CHAIRPERSON ANDERSON: If they change

1 the law. If they tell -- if they change the law
2 to say that there is an exception that this --
3 there is an exception that applies, then fine.
4 The law says that the only exception that exists
5 currently is that it has to be operated,
6 continuous operation. If it doesn't operate for
7 two years, if it's not in operation for two
8 years, then it can't be renewed.

9 But if there is another exception, if
10 the law is changed to say that if it -- that two
11 years or there is a fire, if there is some
12 exception, then we will comply with the law. But
13 it's not with us. There is nothing we can do.

14 MR. DIETZ: But if you do have a BZA
15 order?

16 CHAIRPERSON ANDERSON: If some other
17 Agency tells us that you can have an A or a B
18 License in a Residential, because basically a new
19 license, Zone, that's not -- we don't -- that's
20 not up to us to -- we don't change the law. And
21 we don't change the Zoning Law.

22 MR. DIETZ: Okay.

1 CHAIRPERSON ANDERSON: The only law
2 that we change is the law that -- the ABC Laws.
3 The laws that we write. Okay. We don't go and
4 we don't change Zoning Laws. We don't change the
5 drinking -- yeah, we don't change Zoning Laws.

6 MR. DIETZ: No, BZA does that.

7 CHAIRPERSON ANDERSON: And if the BZA,
8 if they change the law the same way there is in
9 the law that says that the 400 feet, you can't
10 have an establishment within 400 feet. If some
11 other entity changes the law to say that it's no
12 longer 400 feet, it's 100 feet, we will go by it.

13 The same way there is an exception in
14 the law to say that you can't have it within a
15 recreational center, but the Mayor can provide an
16 exception.

17 MEMBER ALBERTI: Well, can the BZA
18 change the law?

19 CHAIRPERSON ANDERSON: I don't know
20 who changes the law. I'm just saying whoever --
21 between the BZA, between the City Council,
22 whoever established that law, if it is changed,

1 we will work on it. But currently, this is the
2 law and there is really nothing that we can do
3 about it.

4 MR. DIETZ: Okay.

5 MR. DEMISSIE: I mean, we work with
6 the BZA. If BZA change, you guys worried about
7 the C of O?

8 CHAIRPERSON ANDERSON: Whoever can
9 change the law --

10 MR. DEMISSIE: Okay.

11 CHAIRPERSON ANDERSON: -- if the law
12 has changed, we will move forward with the status
13 of the law.

14 MR. DEMISSIE: All right.

15 CHAIRPERSON ANDERSON: Okay.

16 MR. DEMISSIE: Thank you.

17 CHAIRPERSON ANDERSON: Are you clear,
18 sir, what it is?

19 MR. DEMISSIE: Yeah.

20 CHAIRPERSON ANDERSON: As I said
21 before, it's clear that there is nothing that
22 this Board can do. Some other entity outside of

1 this Board will revisit the law, change the law
2 to say that you can now have certain type of --
3 and basically, you can have a new license in this
4 Residential Zone.

5 MR. DEMISSIE: Thank you.

6 MR. DIETZ: I appreciate it.

7 CHAIRPERSON ANDERSON: Thank you, sir.

8 MR. DEMISSIE: We came close.

9 CHAIRPERSON ANDERSON: All right.

10 Close, but no cigar, unfortunately.

11 All right. We are in recess. So we
12 are in recess.

13 (Whereupon, the Fact-Finding Hearing
14 was concluded at 11:34 a.m.)

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This is to certify that the foregoing transcript

In the matter of: Brown Street Market

Before: DC ABRA

Date: 02-06-19

Place: Washington, DC

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