



## President's Column: An Unprecedented Year

By Jennie A. Eichelberger



I thought it was fitting to start off my final column as President of CABA by saying thank you to all of our members for joining us in an interesting and unprecedented year.

When I was elected to CABA leadership, I could not ever have imagined that during my presidency we would be facing a pandemic and not be able to hold in person events. It was definitely an unexpected year. I want to give a big thank you to all of our members for continuing your membership this year, supporting CABA and participating in our events—almost all of which were virtual. Also, thank you to the fabulous board of CABA who worked along my side. This year required a lot of brainstorming and thinking outside the box, and our board went above and beyond the call to make this year possible. Thank you to our tireless Executive Director, Jane Harkins. She navigated the technology and all of the zoom meetings and seminars.

This year included CABA hosting not one, but two great golf tournaments. First, due to the pandemic and then second due to

severe weather, last year's golf tournament was pushed back into our year. Last year's golf tournament chair, Jake Bradley, didn't complain but kept pushing to ensure that the golf tournament actually happened. He then turned out and started planning the regularly scheduled golf tournament, which happened on March 22. Thanks to the efforts of our chair and co-chair, Jake Bradley and John Hawkins, our sponsors, and our 104 registered golfers, we were able to present MVLP with a check for \$10,000.

We were thrilled to be able to finish off the year with The Evening Honoring the Judiciary, which was held on May 13 as an in-person event. The turnout was tremendous, and we were so pleased to see everyone's face in person and not just on a zoom event. While the event looked a little different, everyone had a chance to visit with colleagues and friends, and hear from our keynote speakers, Rob McDuff and Wayne Drinkwater.

I am sure I speak for everyone when I say that I welcome the return to normalcy that we are seeing these days. I look forward to the upcoming CABA year under the leadership of Clarence Webster. It was a privilege to serve as the President of CABA this year during such an unprecedented year. 🍀

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## Upcoming Events

**August 17**

CABA Membership Meeting  
Noon • The Capital Club

**October 19**

CABA Membership Meeting  
Noon • The Capital Club

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CABA  
**Fall SOCIAL**  
September 30, 2021

Save  
the  
Date!

Time and location to be announced at a later date. Visit CABA's website for updates.

# ABOUT THAT INITIATIVE 65 CASE...

By D. Nathan Smith, LL.M.



On May 25, 2021, over 200 people<sup>1</sup> rallied in front of the Mississippi Supreme Court. Dubbed “We are the 74,” the group featured almost a dozen speakers who spoke out in opposition to the Supreme Court’s decision in *In Re Initiative Measure No. 65 v. Watson*.<sup>2</sup> The group then proceeded to march around the Capitol, demanding a special legislative session to reverse the decision reached by the Court. The “74” stands for the 74 percent of voters who voted in favor of Initiative 65 in the 2020 election, which would have legalized, according to state law, so-called medical marijuana.<sup>3</sup> The group could more accurately have been titled the 58, since approximately 58 percent of votes cast at the election were in favor of Initiative 65. Seventy-four percent represents the percentage of voters who voted to legalize medical marijuana via *either* Initiative 65 or an alternative proposal, 65A. Regardless, it can be said with reasonable certainty that a majority of the Mississippians who voted in 2020 are unhappy with the Supreme Court’s decision to overturn their choice to legalize medical marijuana. Let us examine the offending case.

## Facts

Following the authority given by Article 15, Section 273(3) of the Mississippi Constitution, the Mississippi Secretary of State certified Initiative 65 after it was satisfied that the required signatures had been collected, and placed it on the ballot for decision in the 2020 election. In October of 2020, prior to the election, Mary Hawkins Butler, in her individual and official capacity as the Mayor of Madison, Mississippi, filed an emergency petition before the Supreme Court, seeking a review of the legality of the constitutional initiative process. She argued that the signature requirement contained in Section 273(3) could not physically be satisfied because only four congressional districts exist (more on this later). The Petition was granted.

## The Majority’s Opinion

The Court’s first order of business was to examine whether it had jurisdiction to review the initiative process. Given the fact that Section 273(9) provides, in part, “The sufficiency of petitions shall be decided in the first instance by the Secretary of State, subject to review by the Supreme Court...” the Court found that it did, in fact, have jurisdiction to review the sufficiency of the petition.

The second housekeeping item was standing. What business does the mayor of Madison

or the city of Madison have challenging a decision of the Secretary of State to place an initiative on the 2020 ballot? Tons of standing, as it turns out. The mayor was found to have standing in her individual capacity because she is a qualified elector. The city was found to have standing because of the adverse impact that could be caused to its zoning authority, which is distinct from any adverse effect that would be suffered by the general public.<sup>4</sup>

Having dispensed with the housekeeping items, the majority moved on to the guts of the petition. Wait, there is one other housekeeping item. The doctrine of laches. Paraphrasing, the Secretary of State argued that the Mayor had left the initiative process alone for too long after it became law and that the office of the Secretary of State and the public were disadvantaged by the passage of time before the challenge was made. This is an interesting thought, because the initiative process began operating in 1992 and has been used, successfully, on a number of occasions since then.<sup>5</sup> Only when it was used to pass an unpopular-to-some law regarding medical marijuana was it challenged.

The court didn’t see it that way, however. The majority found that the office of the Secretary of State wasn’t prejudiced because the petitioners timely filed their constitutionally-authorized petition within the proper time frame after the specific Initiative 65 had been certified for the ballot. With respect to the public, the court found that they weren’t entitled

1. This figure comes from the article entitled “No special session, no reelection?: Mississippians call for legislators to fix initiative process” <https://www.clarionledger.com/story/news/politics/2021/05/25/medical-marijuana-advocates-rally-for-initiative-65-mississippi/5239877001/>, retrieved June 9, 2021.  
 2. 2021 Miss. LEXIS 123.  
 3. Given that the word “marijuana” is mentioned only

once in the Court’s opinion, one is left to speculate whether the true grievance of the entire litigation was purposefully reduced to a single sentence.  
 4. The Secretary of State pointed out that the zoning board was worried about the “curbing of its zoning authority.” In other words, the zoning board’s gripe was that an adverse impact that would result from the substance of the law, i.e. the location

of marijuana dispensaries. The law itself wasn’t being challenged, however, only the initiative certification process. But none of the nine justices seemed concerned about the standing issue and perhaps I shouldn’t be either.  
 5. Foreshadowing of Justices Maxwell’s and Chamberlin’s dissents, although they don’t mention this in the context of laches.

*Continued on page 3...*

to the equitable doctrine of laches under any circumstances, because of “republican and democratic principles.” That is a good point, because the public of Mississippi is governed by laws and a constitution. Thrusting the doctrine of laches into the mix and making it apply universally to the entire public would be ill-advised, at best.

Now, to the guts. The court framed the issue as whether “[t]he reduction in Mississippi’s congressional representation renders article 15, section 273(3), unworkable and inoperable on its face.” The court found that, yes, the *common meaning* of “congressional district” rendered the initiative process unworkable. For an initiative to be successfully placed on the ballot, Section 273(3) provides “signatures of the qualified electors from any *congressional district* shall not exceed one-fifth (1/5) of the total number of signatures required to qualify an initiative petition for its placement on the ballot.” Looking to the Merriam-Webster’s Collegiate Dictionary, the court found that a “congressional district... is a division of a state that elects a member of the United States House of Representatives.” The court found that Mississippi has only had four of these congressional districts since 2002. Importantly, the court also found that “congressional district” in Section 273(3) refers to *current* congressional districts, not congressional districts as they stood in 1992.

So what? Well, to reiterate, Section 273(3) provides that “The signatures of the qualified electors from any congressional district shall not exceed one-fifth (1/5) of the total number of signatures required to qualify an initiative petition for placement on the ballot.” The court referred to this as a “twenty percent cap,” and tied it to the five congressional districts. The effect of the cap was to guarantee “that each congressional district would be equally a part of the process.” But with only 4 districts, it is “mathematically impossible”<sup>6</sup> to get the correct percentage of signatures from qualified electors from each district. Presumably, under the current four districts, the language would need to provide for the signatures of 25% of the qualified electors

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from each district, because 100% of electors should be represented. But the language only speaks of fifths. Thus, the initiative process is unworkable and inoperable on its face.

This was a fairly simple open and shut conclusion for the majority, although a considerable amount of the opinion is spent arguing with the two dissents. Having worked in an appellate judge’s chambers years back, I can only imagine how many times the opinion made the rounds while rebuttals were made to rebuttals.

### Dissents

Justice Maxwell was first up to bat in disagreeing with the majority’s conclusion. The crux of his argument was that Mississippi Code Annotated Section 23–15-1037 lays out five congressional districts in the State of Mississippi. He noted that the statute is unchanged, but that for voting purposes, a panel of three federal judges has enjoined the statute and reduced Mississippi to four districts. Justice Maxwell had no beef with the federal injunction, but he did not believe that it applied for any purpose other than voting. He postulated that Section 273 didn’t come into the federal panel’s consideration when they ruled on voting districts in 2002, nor would it have, because federal courts may not

interpret state constitutions.<sup>7</sup> Thus, Section 23–15-1037 is still controlling for purposes of defining “congressional districts” in Section 273 of the Mississippi Constitution.

He added that Section 23–15-1039 does not erase the congressional districts established by Section 23–15-1037, but merely establishes a holding pattern until the Legislature redraws the districts. Justice Maxwell saw no federal question present in the decision, and saw no reason to look beyond Mississippi law in making a decision. His parting shot across the bow was that the majority found the initiative process “unworkable,” but that “the Attorney General, the Secretary of State, and the majority of voters who passed Initiative 65 and two prior initiatives believe that it works just fine.”

In keeping with the theme of giving federal law no bearing on the outcome, Justice Chamberlin also dissented from the majority’s conclusion. He noted that there is a presumption that the constitution is “capable of ordering human affairs decades beyond the time of ratification, under circumstances beyond the prescience of the draftsmen.”<sup>8</sup> He observed that the judicial branch is entrusted by the people to interpret the constitution, but believed that the majority had disabled “the very thing it was designed to interpret and enforce.”

6. Miss. Att’y Gen. Op., No. 2009-00001.

7. Citing *Pro-Choice Miss. v. Fordice*, 716 So. 2d 645, 665 (Miss. 1998).

8. Citing *Myers v. City of McComb*, 943 So. 2d 1 (Miss. 2006).

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Specifically, he agreed with the opinion of the Attorney General, No. 2009–00001, which the majority cited, but did not adopt. That opinion concluded that “the geographic distribution requirement of Section 273 requires that not more than 20% of the total required number of initiative petition signatures must come from the last five-district congressional district plan which was in effect prior to the adoption of the current four district plan.” Thus, Justice Chamberlin argued that Section 273 signature requirement should operate according to the five congressional districts in effect in 1992 when the initiative process was enshrined in the constitution. He believed that the majority’s dictionary definition of “congressional district,” while not unreasonable, was not supported by historical or textual context. In his view, the majority’s holding would have to mean that the legislature included a “poison pill” in the form of the 1/5 signature requirement, one that would kill the initiative process if any subsequent event changed the districts. Like Justice Maxwell, he noted that the initiative process had worked just fine since its adoption, and that there had been multiple successful amendments to the constitution.<sup>9</sup> He noted that the job of the judiciary was to make the constitution work, to “adopt a

construction of the statutes which purges the legislative purpose of any constitutional invalidity, absurdity, or unjust equality.”<sup>10</sup>

### Who Was Right?

It’s difficult<sup>11</sup> to look at any of these interpretations and say they are “right” or “wrong.” Clearly the six-justice majority wrote the controlling opinion and we no longer have an initiative process. The governor has suggested calling a special session to pass legislation to incorporate many of the provisions of the law contained in Initiative 65, but separate legislation would be necessary to “fix” Section 273, since the court has deemed it broken.

My former law school classmate and colleague Matthew Thompson wrote in his blog that the majority decision demonstrates the Doctrine of Absurdity. “In law, strictly literal interpretations of statutes can lead to seemingly absurd results. The doctrine of absurdity holds that common-sense interpretations should be preferred in such cases, rather than literal readings.”<sup>12</sup>

Justice Chamberlin wrote in a footnote that “the majority’s interpretation is like a well-manicured lawn whose caretaker focuses on one isolated blade of grass – here, the term

‘congressional district’—while ignoring the weed<sup>13</sup> that is context.” He goes on to note that the majority “slams the lid on the initiative process. This surely cannot be the intent of the Legislature and the people.”

My thinking goes doggedly back to the question of standing, which is intertwined with these thoughts. A single city and its zoning board was given the opportunity to overturn a provision agreed to by a majority of voting Mississippians and even the initiative process itself. It seems wrong, but perhaps that is where the true poison pill lies: that the law presented in Initiative 65 did not give individual municipalities enough latitude to “opt-out” of the presence of medical marijuana.<sup>14</sup> After all, approval of alcohol within municipal borders is a far more local matter for decision, which has resulted in a “patchwork quilt” of rules across the state. I realize there is no such thing as “medical alcohol,” but I think we can also agree that the use of the “medical” modifier with the word “marijuana” is the subject of some disagreement.

Regardless of the medical marijuana context, I am discouraged to see the initiative process declared inoperable, and do hope to see a fix proposed and passed by the legislature. ➡

9. Both of these arguments are somewhat similar to the Secretary of State’s argument regarding the doctrine of laches, i.e., the process has worked for nearly 30 years, and it is improper and/or harmful to stop it now.  
 10. Citing *Mississippi Practice Series: Encyclopedia of Mississippi Law* § 68:75 (2d ed.), which in turn quoted *Univ. of Miss. Med. Ctr. v. Robinson*, 876 So. 2d 337, 340 (Miss. 2004).  
 11. But not impossible...  
 12. [https://bowtielawyer.ms/2021/05/18/mississippi-just-said-no-to-drugs-your-right-to-ballot-initiatives-](https://bowtielawyer.ms/2021/05/18/mississippi-just-said-no-to-drugs-your-right-to-ballot-initiatives-legal-absurdity/)

[legal-absurdity/](#) (retrieved June 15, 2021).  
 13. Pun intended? If so, bravo Justice Chamberlin!  
 14. The offending language is in Section 8(5) of the initiative law, which provides in relevant part “any zoning ordinances, regulations and/or provisions of a municipality or county shall be consistent with Section 1 of this article *and shall not impair the availability of and reasonable access to medical marijuana*. Zoning provisions applicable to retail dispensaries shall be no more restrictive than those for a licensed retail pharmacy and zoning provisions applicable to other businesses that fall within the

definition of medical marijuana treatment centers shall be no more restrictive than other comparably sized and staffed lawful commercial or industrial businesses.” (emphasis supplied). No wonder the Madison County zoning board had beef! Still, it is unfortunate that their beef with Section 8(5) also negated the entire constitutionally-enshrined initiative process.

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Start the discussion...



# *An Evening* HONORING the JUDICIARY *Banquet*

CABA's Evening Honoring the Judiciary was a welcome return to in-person events. Lawyers and judges had a great time catching up with each other and enjoying the evening on May 13. This year's speakers, Rob McDuff and Wayne Drinkwater, discussed changes in election law and the ways those changes will affect the right to vote in several jurisdictions. They also provided some inspiration for members of the bar, encouraging involvement in pro bono work and other public service. CABA and Jackson Young Lawyers passed the gavel to their incoming Presidents after a successful year, and presented awards, including JYL Outstanding Service Award winner, Russell Dumas; JYL Pro Bono Award winner, Jullian Miller; CABA Outstanding Service Award winner, Jacob A. Bradley; CABA Outstanding Service Award winner, Frank Rosenblatt; and CABA Professionalism Award winners, Roy D. Campbell, III and La"Verne Edney. Thanks to all who attended and sponsored the event, and to the event chair, Missye Scott, and co-chair, Meta Copeland.



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An Evening HONORING THE JUDICIARY Banquet



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*An Evening*  
HONORING THE **JUDICIARY** *Banquet*



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*An Evening*  
HONORING THE **JUDICIARY** *Banquet*



# Our Legal Heritage: *The Courthouse at Jacinto*

By Luke Dove

One of the finest examples of Federal style architecture in America is located a few miles south of Corinth in the virtually abandoned town of Jacinto, Mississippi. This graceful and stately building is popularly known as the Jacinto Courthouse. Until 1870 it served as the courthouse and seat of government of (Old) Tishomingo County.

## Where Jacinto Got Its Name

Jacinto, Mississippi was incorporated in late 1836 by veterans of the Battle of the San Jacinto in Texas. This famous battle for Texas independence stirred the imagination of settlers in Mississippi. They may have mangled Spanish pronunciation but remained true to the ideals of liberty.

Today we don't know or think much about the Battle of San Jacinto in April, 1836. But we surely know the story of the siege of the Alamo Mission at San Antonio one month earlier in March, 1836. General Santa Anna and his army besieged and killed all the mission defenders except two. Those who died at the Alamo included the frontier legends Jim Bowie and Davey Crockett. One of the two Alamo defenders to have survived was the famous Texas scout, Erastus "Deaf" Smith (pronounced "Deef") who was the courier for William Barrett Travis, the Alamo commander.

The perceived justice of the cause for independence for the fledgling Republic of Texas coupled with sensational reports of cruelty by the Mexicans incited hundreds of southern patriots and adventurers from Mississippi and Tennessee to join the ragtag army of General Sam Houston as he retreated across east Texas. Those who were able to remain sober during the daylight hours found themselves marching with General Houston

over a wooden bridge (Vince's Bridge) which spanned the San Jacinto River. Most of Santa Anna's army had already crossed Vince's bridge and was patiently waiting for the Texan Army on the other side.

Deef, who joined Texan army as a scout, was originally from Port Gibson. Even so, he apparently had little confidence in the battle skills of his fellow southerners. In the event the pending battle might turn into a decision as to whether to fight or to retreat, Deef made the potential choice clear by burning Vince's bridge behind Sam Houston's army, thus effectively reducing their tactical choices. Deef, having fought off a band of Comanche a few years

earlier, believed that 1,500 Mexicans could hardly be a challenge.

Deef turn out to be right because, as the fates of war would have it, the Mexican army was (literally) taking a siesta with their camp followers during the midday heat. By afternoon Houston formed his men into battle lines and attacked.

The infantry charge lasted only 18 minutes. But the slaughter continued for some time thereafter as Mexicans were shot while attempting to retreat across the San Jacinto River. Shouting "Remember the Alamo" the Texans and their allies killed over 600 Mexicans and captured 700 more. Only 9 Texans died.

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Santa Anna sought to facilitate his own escape by discarding his colorful gold-braided uniform. Unluckily, however, he continued his hasty retreat wearing silk underwear and was thus recognized and captured by a perceptive Texan who probably did not own any underwear. Sam Houston spared the life of Santa Anna and negotiated a treaty which led to the independence of the Republic of Texas.

## The Jacinto Courthouse Story

Tishomingo County was organized in February 1836 from a vast tract of land ceded by the Chickasaw Nation when Chief Tishomingo made his mark on the Treaty of Pontotoc. The chief and hundreds of other displaced Native Americans later died along the "Trail of Tears," thus effectively ending Chickasaw culture in Mississippi. Millions of acres of virgin land and timber were acquired by speculators.

Jacinto was incorporated later in 1836 as the Tishomingo county seat and named in honor of the now famous battle in Texas. Within ten years, Jacinto became a flourishing town with stores, hotels, schools, churches and, of course, taverns. It served as the center of government and commerce for Tishomingo County.

The elegant Tishomingo County courthouse was commissioned in 1852 and was built from bricks fired on the site. Construction was completed in 1854 for a cost of less than \$8,000. Both the courthouse and the town of Jacinto were busy places for several years. No doubt justice was swift and certain at the courthouse in Jacinto since hapless prisoners could reflect upon the stout limbs of the hanging tree from the window in the jail. But just a few years later, between 1856 and 1860, the railroads laid their tracks through



Corinth and bypassed Jacinto. This was both good and bad.

The bad part was that the town of Jacinto withered as commerce and trade went through Corinth. The good part was that when General U. S. Grant disembarked from a steamer at Pittsburg Landing on the Tennessee River in April, 1862 he marched to the railroad junction in Corinth after a brief but very bloody detour at a place called Shiloh Church. Jacinto and its courthouse were spared.

In 1870, Tishomingo County was divided into three counties: Tishomingo, Alcorn and Prentiss. Corinth became the county seat of the newly established Alcorn County. The county seat of the much reduced Tishomingo County was organized at the town of Iuka, named for a son of Chief Tishomingo.

After 1870, the courthouse was gradually

abandoned as the town of Jacinto diminished in size and importance. There were no longer terms of court, and the business of the county moved to Iuka. The building was used as a school for about 30 years. But the school closed. For the next 50 years it housed a small Methodist church. Then the church disbanded. The congregation sold the building for salvage to a wrecking company for \$600. In 1964 a group of Mississippi citizens bought the building from the salvage company for \$2,000 and saved it from certain destruction.

Today the "Old Courthouse at Jacinto" has been refurbished and is listed in the National Register of Historic Places. It is open to visitors and is considered to be one of the most elegant and graceful Federal style buildings in the United States. ➡

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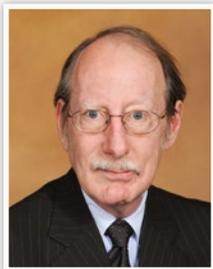


# » On Computing

Focused on the Contemporary Lawyer



## How to Zoom through Zoom...



By Joel Howell

Like it or not, Zoom has become an integral part of office software over the past year. While it is helpful in many ways and the program is user friendly, there are some features that are new that you might not know about. Thanks to CNET and the Internet, here are some nuances that can help.

Zoom allows users to change their backgrounds. This feature allows you to transport your background from anywhere in the world and beyond. You can also add custom backgrounds with your firm's logo or a picture of your conference room, so it seems more personable. To do so, go to **Settings > Virtual Background** and select or upload the image you want to use.

Having your name on the Zoom screen can help when you are meeting with unfamiliar people. Making sure your name is correct on the screen is a great place to start. For temporary changes or changes just for a specific meeting, after you enter a meeting, click the **Participants** button at the bottom of the screen. Just hover over your name and click **More > Rename**. Then type in the name you want to appear and click **OK**. For name changes that will occur for all your meetings, go to the Zoom web portal and sign into your account. Click **Profile** and in the top right corner across from your name, click **Edit**. You then need to enter your name under "Display" name and click **Save changes**. This will allow for your name to appear in every meeting going forward. The good news is you can continue to change it for individual meetings with the temporary method detailed above.

You can also change your profile picture temporarily. To do so, click the **Participants** button (at the bottom of the screen) and hover over your name. Then click **More > Add profile picture**. You then just need to select the picture you want to use for that meeting and click **Open**.

To change your picture for all meetings, log into your Zoom account, click **Profile**, and at the top right corner across from your name, click **Edit**. At the empty photo icon, click **Change > Upload**, then select the picture you would like to use and click **Open**. Size the picture and click **Save**.

Having audio or video you didn't realize was on when you first connect into Zoom can be awkward. So, to save you from that, you can set your settings to automatically turn off your camera and audio by default. The steps are as follows: go to **Settings > Audio > Mute microphone when joining a meeting**, and then **Settings > Video > Turn off my video when joining a meeting**. This will save you a lot of time and effort when you first join the meeting.

A quick and easy way to switch your audio on and off is to use your keyboard instead of having to scramble to locate your mouse when you need to speak. A keyboard shortcut is to press and hold the spacebar. This allows you to quickly mute and unmute your mic, without having to use your mouse.

The beauty filter feature might sound funny, but it can be helpful in situations where the lighting is not so great. Zoom's touch up my appearance feature aims to smooth over your appearance, making you look well-rested. The effects are like that of the beauty mode on a phone's selfie camera. To turn on, click the **up arrow** next to Start Video, then click **Video Settings**, and under My video, click the box for **Touch Up My Appearance**.

Early in the pandemic, "Zoom bombing" made headlines. It is where uninvited guest would crash a Zoom meeting and disrupt it. Waiting room is a tool to help you prevent this from happening. A waiting room is basically a tool that allows the host of the meeting to see who's attempting to joining the meeting before allowing them access to the meeting. To enable this feature, go to **Account Management > Account Settings** and click on **Meeting**, then **Meeting Room**. This will enable the meeting room setting.

Breakout rooms are a great tool if a conference has been moved to virtual or there is a large group meeting that could use some smaller discussions. As the host, you can separate the groups automatically or manually and the host can enter different breakout rooms during that time. To begin a breakout room as a host, go to **Account Management > Account Settings** and under the **Meeting** tab, go to **Breakout Room**, and make sure the setting is toggled on. In this setting you (as the host) can pre-assign participants to breakout rooms.

Screen sharing might seem like a basic function that everyone knows but it is so useful it is worth mentioning again. A user can enable screen sharing by clicking the **Share screen** icon on the

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bottom toolbar then clicking the red **Stop Share** button at the top of the screen when they are done sharing their screen. Users can do this automatically if they are the host of the meeting. However, if a user is just a participant of a meeting, they might need the host of the meeting to enable participants to share their screens.

Often in larger meetings questions are asked of the group and it is impractical for everyone to verbally answer or write in the chat. A tool that can help is using an emoji to answer simple questions. An example of how this can be useful is if the host asks, “have you all read this report yet?” and instead of everyone unmuting, participants can give the thumbs up or down emoji to indicate they have or have not read the report. To use this function, click the **Reactions tab** at the bottom of the meeting screen and choose the emoji you want to use (there are 40 options). The emoji you choose will appear on your screen / video window for 5 seconds then disappear. Another tool a host of a meeting can utilize is the nonverbal feedback feature. This allows participants to place icons on their screen (such as raised hand) to communicate and every participant will be able to see each other’s nonverbal feedback.

Gallery View is a helpful tool to allow you to see all meeting participants and be a little more engaged with the meeting. To activate this feature, you will need to click the tab that says **Gallery View** in the top right corner. If your meeting has 49 or fewer participants, you will be able to see all of the participant’s windows on one screen. However, if there are more, you will be able to move through multiple pages. To change back to the speaker only view you will need to click **Speaker View** in the same top right corner.

The Zoom immersive view feature is a new feature from Zoom which allows you to put yourself in the same virtual background as your fellow video chat participants (think conference room, classroom, court room, etc.). If you are the host of the meeting, start the Zoom meeting on your desktop and in the top right corner, where you find Speaker or Gallery View, you’ll see the option to enable **Immersive View**. Next, click Immersive View, and choose from a stock image provided by Zoom or upload your own personal image. Now, you and your meeting participants will be placed in the same virtual background.

During some larger meetings, it is easier to have your screen get cluttered with participants who are just a blank screen (if they don’t have video on or a set picture) and it can be distracting. To hide the participants not using video, go to **Setting > Video > Meetings**, and

check the box **Hide non-video participants**. Now your screen will have only those participants whose videos are up.

Zoom has a feature called “vanishing pen” and it is a great tool for those who are sharing their screens in the meeting to highlight or bring attention to important texts on the screen. Once you draw a line using the pen, the line will fade away, so you don’t have a messy screen when you scroll up on a document and you do not have to worry about actively erasing the marks you make. To use this feature, you will need to share your screen, and click **Annotate**, then on the menu that will pop up, click **Vanishing Pen**.

Recording the meeting onto your computer is a helpful tool you can use to keep team members up to date who can’t make a meeting. The great news is that both free and paid Zoom users can record their meetings to a laptop or computer using the desktop app. Currently, only the paid Zoom subscribers can record using their mobile devices. These recorded files can then be uploaded to a file storage service such as Google Drive or Dropbox, or a video streaming service such as YouTube or Vimeo. To do so, go to **Settings > Recording** and toggle it on. Now when you are hosting a meeting, click the **Record** icon on the bottom toolbar.

Recording a meeting to the cloud is a true space saver for those who want to record meetings but don’t want to use a lot of their computer’s storage space. This requires a paid Zoom plan (which start as low as \$15/ month). Users can then record the meeting directly to the cloud (or upload to your computer). To do so, just tap the record button on the bottom toolbar, which will give you the option to record locally or to the cloud. This feature is available for either desktop or mobile devices.

Currently, the free Zoom plan only allows group meetings for up to 40 minutes. However, you can have unlimited one-on-one meetings under this plan. If you will need group meetings longer than 40 minutes, you will have to upgrade to a paid account. Additionally, some meetings require more than 100 participants in the meeting. This will require users to upgrade to a paid professional account (which is Zoom’s highest account tier) called Enterprise Plus. If you have this plan, hosts can have meetings with up to 1,000 participants. ➔



Questions or comments?

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# Plague and Pandemic, 2020 and Thence

By James L. Robertson



No sooner had the Western World's calendar turned the page to the month of January, and to the beginning of the new year 2020, when American disease control patrons learned of "an unexplained

respiratory virus emerging in the great city of Wuhan," geographically embedded well within Asia and more particularly in south central China.<sup>1</sup> Not since the 1918 Influenza pandemic<sup>2</sup> had the people of this planet seen the likes of such, much less of the circumstances soon to follow via the COVID-19 pandemic.

Without surprise, George Fu Gao, who at that moment in time headed the Chinese Center for Disease Control—and who, when pressured, in the face of all facts highly unpopular politically in their time and setting—assured one and all "that there was then no evidence of human-to-human transmission"<sup>3</sup> amongst the species *homo sapiens* or within the relevant Chinese political and social environs, nor would there likely be such evidence within the foreseeable future.

Well aware that the proverbial jaundiced eye, and the skeptical "hmmmmmm???" were and would remain of considerable communicable value in such settings, Robert Redfield, director of the U. S. Center for Disease Control and

Prevention, gathered several dozen CDC specialists and formally asked the Chinese government and officialdom for permission to pay a visit to the Wuhan area and its environs, and to take a look around.

Silence. Inactivity.<sup>4</sup> Nothing.

Only a few days later, however, visiting with Redford in another setting altogether, the talk led Gao to the point where he almost began to cry. "I think we're too late."<sup>5</sup>

The truth be known, the dreaded virus had been circulating in China since the previous November, and, as well, in this country, and in states such as California, Oregon and Washington. And it would likely soon be spreading as far away as, and into, Connecticut, Massachusetts, Rhode Island, and more centrally to Iowa, Michigan, and Wisconsin.<sup>6</sup> The CDC had unwittingly been relying and acting on false and misleading China-shielded data.

All of this while, former journalist Matthew Pottinger<sup>7</sup> had somehow remained beneath the radar screen within President Donald J. Trump's White House, in further and differing dimensions of its political and social adventures.<sup>8</sup> Within these same environs, Pottinger was already less than popular. He had become a U.S. deputy national security advisor, and an early champion of masks as shields, arguably adequate to protect otherwise exposed persons from potential ravages as per the said coronavirus.

But there may have been more to be told. A further occasion or two or ten may have

reached the interests or concerns of public figures, not altogether unlike these, men such as Redford and Gao and Pottinger. All of this, and while bearing in mind that the French Nobel laureate Albert Camus had enlivened and then penned and published a book about a plague once, as in 1948, touching upon such matters, having more than a few points to make, and thoughts to share.

And, to be sure we're on the same page in all of this, you should understand that a man of letters, or one learned in the Western literary arts, does not merely "read Camus." The sort of gentleperson of interest, activity and reflection here "re-reads Camus."<sup>9</sup>

And no matter how often one re-reads Camus, and particularly *The Plague*, Dr. Bernard Rieux is there, in the 1940s, in and about the town of Oran, a large French port on the Algerian coast. Then and thereafter, Dr. Rieux, his colleagues and acquaintances, have had much to tell us and to teach us, always have had, and always will have. "One of the most striking consequences of the closing of the gates of Oran was, in fact, this sudden deprivation befalling people who were completely unprepared for it."<sup>10</sup>

Understand one thing. For the most part, Dr. Rieux lived and practiced and taught us in times when the town had been put into legally enforceable quarantine, Mediterranean variety. No one in Oran could leave. Period. No one, male nor female. Nor a soul besides. If a person wandered into Oran, even by mistake,

1. See Lawrence Wright, "The Plague Year: The mistakes and the struggles behind an American tragedy," *The New Yorker*, at 22-59 (Jan. 4 & 8, 2021).  
 2. See John M. Barry's *The Great Influenza: The Epic Story of the Deadliest Plague in History* (2004).  
 3. Wright, *The Plague Year*, at 22.  
 4. *Id.*  
 5. *Id.*  
 6. *Id.*  
 7. Yours truly well recalls a get-together and gathering

with J. Stanley Pottinger at the San Francisco apartment of Edward Morris Stadium in the summer of 1966. The three of us had been classmates, graduating from the Harvard Law School with the Class of 1965, and we were beginning our careers, imbued with the charge to "make a difference." See Harvard Law School, *Nineteen Sixty Five* 110, 111, 117 (Yearbook 1965); Wright, at 33. A generation later, Stanley Pottinger had become Matthew's father, and Paul's as well.

8. Wright, at 23; also at 22, 24, 29, 30, 32, 33, 35, 39, 42, 47, 48, 56 and maybe more. Matthew Pottinger's brother Paul had become an infectious disease physician, at 24.  
 9. See James L. Robertson, "A Fall of Fortuities (A Paean in Memory of John Hampton Stennis)," p. 3; <https://caba.ms/articles/features/fall-fortuities-john-hampton-stennis>.  
 10. Camus, *The Plague* 67 (1948).

*Continued on page 14...*

he or she was stuck. For a long, long, very, very long, long time. The aggregate political and public price of Oran’s allowing departure was just too great, even in balance!

Unlike others, Dr. Rieux saw that “[o]nly the law was the law, plague had broken out, and he could only do what had to be done.”<sup>11</sup> Directly addressing Rambert, Dr. Rieux added, “You don’t understand. You’re using the language of reason, not of the heart; you live in a world of abstractions.”<sup>12</sup>

When Dr. Rieux first met the man known as Grand—not without note to be taken—the former explained to the latter the probabilities that the whole town of Oran would soon be a madhouse. Until Rieux began feeling exhausted, that is, and his throat parched, so that he paused. “Let’s have a drink” was Rieux’ timely and remedial admonition to Grand.<sup>13</sup>

Understand that Oran’s first onslaught of “the heat synchronized” soon was leading to “nearly seven hundred deaths a week.”<sup>14</sup> “It was plain to see that Spring had spent itself, . . . now being crushed out by the twofold onslaught of heat and plague.”<sup>15</sup> Then “a hundred and thirty deaths in a day.”<sup>16</sup> “Plague had killed all colors; vetoed pleasure.”<sup>17</sup> And men met, “All shops . . . shut . . . Closed, printed on each door, *owing to plague*.”<sup>18</sup>

Upon it being suggested that plagues have their good side, Dr. Rieux reflected, and then responded, “So does every ill flesh is heir to. What’s true of all the evils in the world is true of plague as well. It helps men to rise above themselves.”<sup>19</sup> In time, another reflection, *viz.*, “The evil that is in the world always comes of ignorance, and good intentions may do as much harm as malevolence, if they lack understanding.”<sup>20</sup> On the whole, men “are more or less ignorant, and it is this that we call vice or virtue; the most incorrigible

vice being that of an ignorance that fancies it knows everything.”<sup>21</sup>

Then there was one, a man named Tarrou, and who had vision with insight, that he might “know now that man is capable of great deeds. But that, in and of itself is not enough, and should never be taken as enough, for if a man isn’t capable of a great emotion, well, he leaves me cold,”<sup>22</sup> as he should leave you as well.

Yet plagues and wars still—and always will—take people by surprise.<sup>23</sup>

As with most others, “this plague was no respecter of persons and under its despotic rule, everyone, from the warden down to the humblest delinquent, was under sentence and, perhaps for the first time, impartial justice reigned in the prison.”<sup>24</sup> “The truth is that nothing is less sensational than pestilence, and by reason of their very duration, great misfortunes are monotonous.”<sup>25</sup>

As one might readily have expected, Dr. Rieux looked out around him and what he saw were sick people, and that “sick people needed curing.”<sup>26</sup> In plague time, he had become a healer no more, reduced to the role of a diagnostician. Yet in his humility and candor, the good doctor would admit, “I have no idea what’s awaiting me, or what will happen when all of this ends.”<sup>27</sup>

As per Dr. Rieux and his sense of place, “But, you know, I feel more fellowship with the defeated than with saints. Heroism and sanctity don’t really appeal to me, I imagine. What interests me is being a man.”<sup>28</sup> With his humanity, Dr. Rieux saw “that a loveless world is a dead world, and always there comes an hour when one is weary of prisons, of one’s work, and of devotion to duty, and all one craves for is a familiar face, and the warmth and wonder of a loving heart.”<sup>29</sup> “For plague is the flail of God and the world, His threshing-floor,

and implacably He will flesh out His harvest until the wheat is separated from the chaff.”<sup>30</sup>

Dr. Rieux was a wise and insightful man in many respects. Once Tarrou suddenly said to him, “Who taught you all this, Doctor?” The reply came promptly. “Suffering.”<sup>31</sup>

And as with Dr. Rieux, “. . .you’re capable of dying for an idea; one can see that right away. Well, personally, I’ve seen enough of people who die for an idea. I don’t believe in heroism . . . What interests me is living and dying for what one loves.”<sup>32</sup> Indeed, people “had adapted themselves to the very condition of the plague, all the more potent for its mediocrity. None of us was capable any longer of an exalted emotion; all had [but] trite, monotonous feelings.”<sup>33</sup> “No longer were there individual destinies; only a collective destiny, made of plague and the emotions shared by all. Strongest of these emotions was the sense of exile and of deprivation, with all the crosscurrents of revolt and fear set up by these.”<sup>34</sup>

No part of the plague and its story tugged at the soul more than the fate of the children of Oran, their emerging humanity and that of those whose lives interact. Again and again, Drs. Rieux, Castel and the other faced the mothers. Was the anti-plague serum ready, when they first tried it on M. Othon’s small son, whose case seemed all but hopeless?<sup>35</sup>

“Doctor, you will save him, won’t you?”<sup>36</sup> “Rieux gazed down at the child again.”<sup>37</sup> “But—save my son.”<sup>38</sup> “Only the child went on fighting with all his little might.”<sup>39</sup> “Please, God, give him buboes.”<sup>40</sup> “My God, spare this child.”<sup>41</sup>

“[W]e see no reason for a child’s suffering.”<sup>42</sup> Yes, there is more. “For who would dare to assert that eternal happiness can compensate for a single moment’s human suffering?”<sup>43</sup> ➡

11. *Id.* at 87.  
12. *Id.*  
13. *Id.* at 101.  
14. *Id.* at 111.  
15. *Id.* at 113.  
16. *Id.*  
17. *Id.*  
18. *Id.* at 118.  
19. *Id.* at 125.  
20. *Id.* at 131.  
21. *Id.*  
22. *Id.* at 162.  
23. *Id.* at 137.

24. *Id.* at 169-70.  
25. *Id.* at 179.  
26. *Id.* at 127, 193.  
27. *Id.* at 127.  
28. *Id.* at 255.  
29. *Id.* at 261.  
30. *Id.* at 95.  
31. *Id.* at 128-29.  
32. *Id.* at 162.  
33. *Id.* at 181.  
34. *Id.* at 167.  
35. *Id.* at 192.  
36. *Id.*

37. *Id.* at 211.  
38. *Id.* at 212. The full text prior hereto reads, “Before leaving, Rieux on a sudden impulse asked the Othons if there wasn’t anything they’d like him to do for them. The mother gazed at him in silence. And now the magistrate averted his eyes.”  
39. *Id.* at 216.  
40. *Id.* at 226.  
41. *Id.* at 217.  
42. *Id.* at 223.  
43. *Id.* at 224.



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