“There’s something happening here*”

The paradigm is shifting
The queen is dead. Long live the king!

*But what it is ain’t exactly clear.”
Buffalo Springfield, 1967
COVID

- Lots happened related to law during COVID
  - Mismanagement
  - Ideologically driven excess
  - Changes in the Supreme Court
  - Lots of lawmaking
  - Lots of lawyering, better and worse (See Kelly)
  - Terrible health outcomes and disparities
We hoped for and adopted a “Transdisciplinary” Approach

Didn’t work too well:
COVID raised basic questions about what public health law is all about

Legal work for the public good
Public health practice
And its targets

Law that matters to health

Infrastructural health law (jurisdiction, authority)
What are we doing?

- There is an easy list of things we are against (see Wendy, Sabrina, Dawn)
  - Preventable morbidity and mortality
  - Health disparities and inequities
  - Racism, discrimination and the inequitable application of government power
  - Systematic use of preemption to frustrate local efforts to act for local health and welfare
  - Activist republican courts constraining elected officials’ power

**BUT: a list of what we are against ≠ a statement of what we are FOR**
What are we for? Health? Really?

- The WHO Constitution: “Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”

- Implications—and tensions
  - Well-being can conflict with disease prevention or infirmity Rx
    - COVID lockdowns and nursing homes, churches
    - Risky behavior (sex, drug use, eating meat and fritos)
  - Physical, mental and social well-being come depend on the terms of the social contract and our fidelity to it
    - Social determinants is a health way to talk about this
      - But there are many others

I am FOR “a fair and just society with effective institutions and well-regulated markets that provides the necessary conditions of well-being, respect, fairness, opportunity and security to every member of the community.”
What we do as “lawyers for well-being” is MORE than just supporting public health agencies or pursuing disease reductions
We may even by critics sometimes

Critical distance
Advocacy toward
Good trouble of all kinds

Legal work for the public good
Public health practice
“Durable Paradigm Shifts”? (Jill)

Fidelity to facts and evidence
Reliance on scientific method to learn and combat bias
Faith in the possibilities of concerted population-level action
Trust in law and rule of law
Altruism
Love

Public health provides a strong foundation for any new paradigms – and for OPTIMISM
Legal Epidemiology

What could be more toxic to society’s glue of civic capital then a system that places policymakers firmly at the center of action – they make the rules and solve the problems – but lacks any robust or systematic evaluation of the effects of the solutions official problem solvers provide.
SO: Doubling down on legal epidemiology

Legal epi stands for great ideas:
• Laws can be effective
• Policymakers can be held accountable
• Innovation is good
• Law is a great way to spread effective solutions

Legal Epidemiology

Legal etiology
• The study of “incidental public health law” -- laws and legal practices as causes of disease and disease risk

Legal prevention and control
• The study and practice of interventional and infrastructural health law

Policy surveillance
• The scientific tracking of policies important to health → Public access to legal information and data
Opportunity (big) (see Jill’s bright spots)

Law that matters to health

Infrastructural health law (jurisdiction, authority)
But more targets and allies bring challenges

- **Choosing**
  - Defining goals
  - Thinking through ideological and other biases
  - Incorporating diverse perspectives and expertise
  - Seeing new possibilities within robust strategies

- **Implementing**
  - Coordination and cooperation
  - Funding and institutional infrastructure
  - Framing and messaging

See, e.g., Dawn: A new paradigm is not necessarily an equitable one
New target examples (challenging)

Law that matters to health

The “legal code” of wealth CREATION and maintenance (K. Pistor)

Procedural burdens on innovation and effective action (N. Bagley)

Infrastructural health law (jurisdiction, authority)
CONFIDENTIAL MEMORANDUM

ATTACK ON AMERICAN FREE ENTERPRISE SYSTEM

TO: Mr. Eugene B. Sydnor, Jr.    DATE: August 23, 1971
Chairman
Education Committee
U.S. Chamber of Commerce

FROM: Lewis F. Powell, Jr.

This memorandum is submitted at your request as a basis for the discussion on August 24 with Mr. Booth and others at the U.S. Chamber of Commerce. The purpose is to identify the problem, and suggest possible avenues of action for further
Challenging ourselves

- Can we escape our silos?
- Can we keep our eye on the global ball while we do our local work?
- Can we be more nimble?
  - All rules can be gamed; when it comes to our regulatory wins, how good are we at anticipating and pivoting?
  - How quickly can we adjust to negative developments in the law? We have the Supreme Court we have, and all the nostalgia for Earl Warren (or even William Rehnquist) will not change that. Since we know the other side games, can we?
In this cultural moment of tension, frustration, powerless and despair we must bring unquenchable optimism that our experiment in democracy can succeed, our fractious polity can cooperate, we are smart enough and altruistic enough and tough enough to solve the problems we face and deliver a healthy, happy and equitable society.

- We’ve got questions about goals, strategies and tactics
- We face some strong cultural headwinds
- We’ve never fully freed ourselves from the sickness of racism
- Huge resources are pitted against us

Nonetheless....