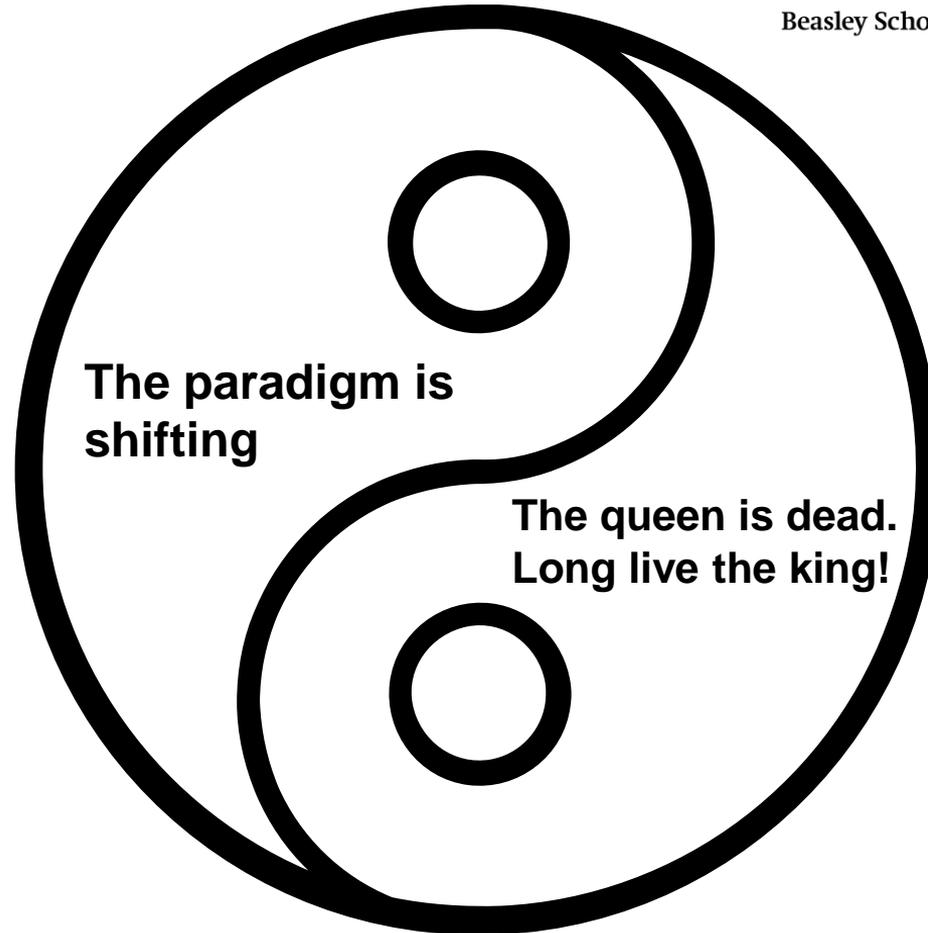


# Acting for Public Health: Legal Work for a Better Future

Scott Burris, JD

*St. Louis University: “The Laws, Policies, and Politics of  
Public Health Emergency Powers”*

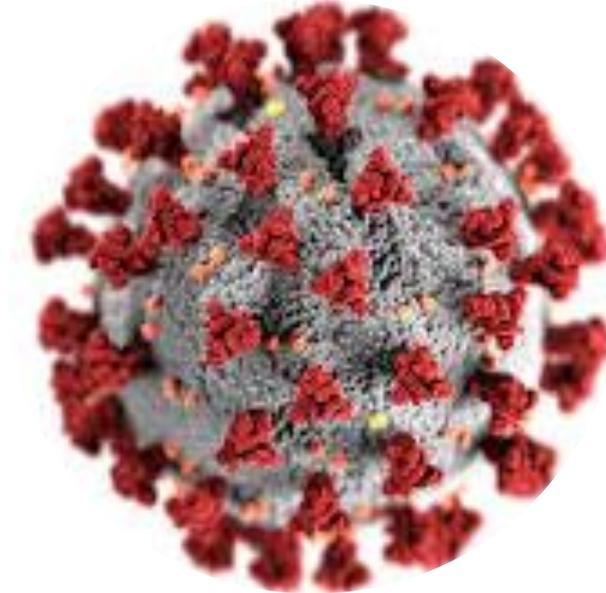
**“There’s  
something  
happening  
here\*”**



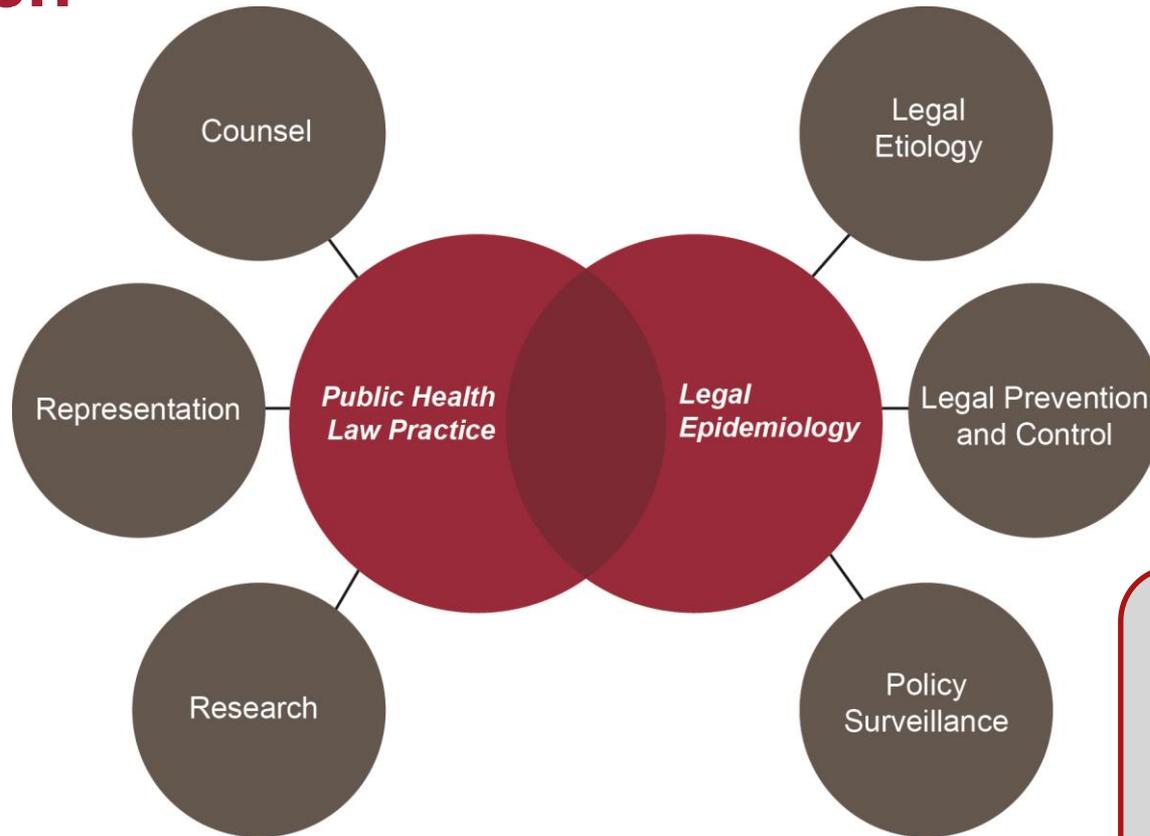
\*But what it is ain't exactly  
clear."  
*Buffalo Springfield, 1967*

# COVID

- Lots happened related to law during COVID
  - Mis –management
  - Ideologically driven excess
  - Changes in the Supreme Court
  - Lots of lawmaking
  - Lots of lawyering, better and worse (See Kelly)
  - Terrible health outcomes and disparities

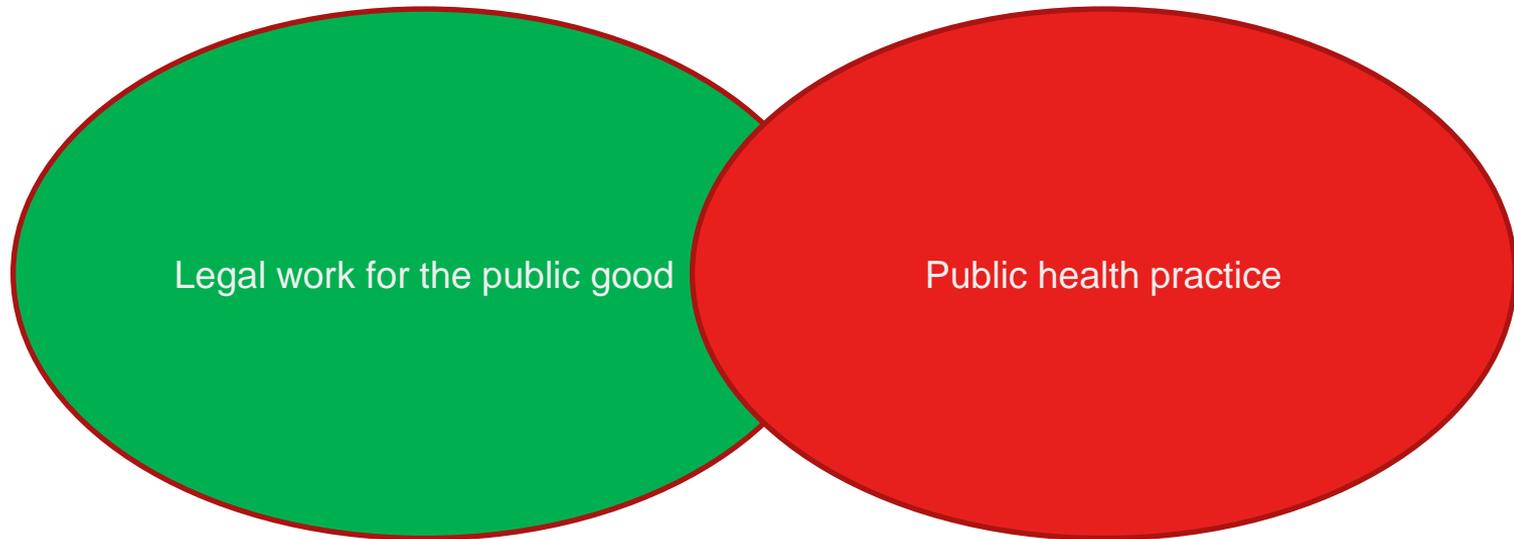


# We hoped for and adopted a “Transdisciplinary” Approach

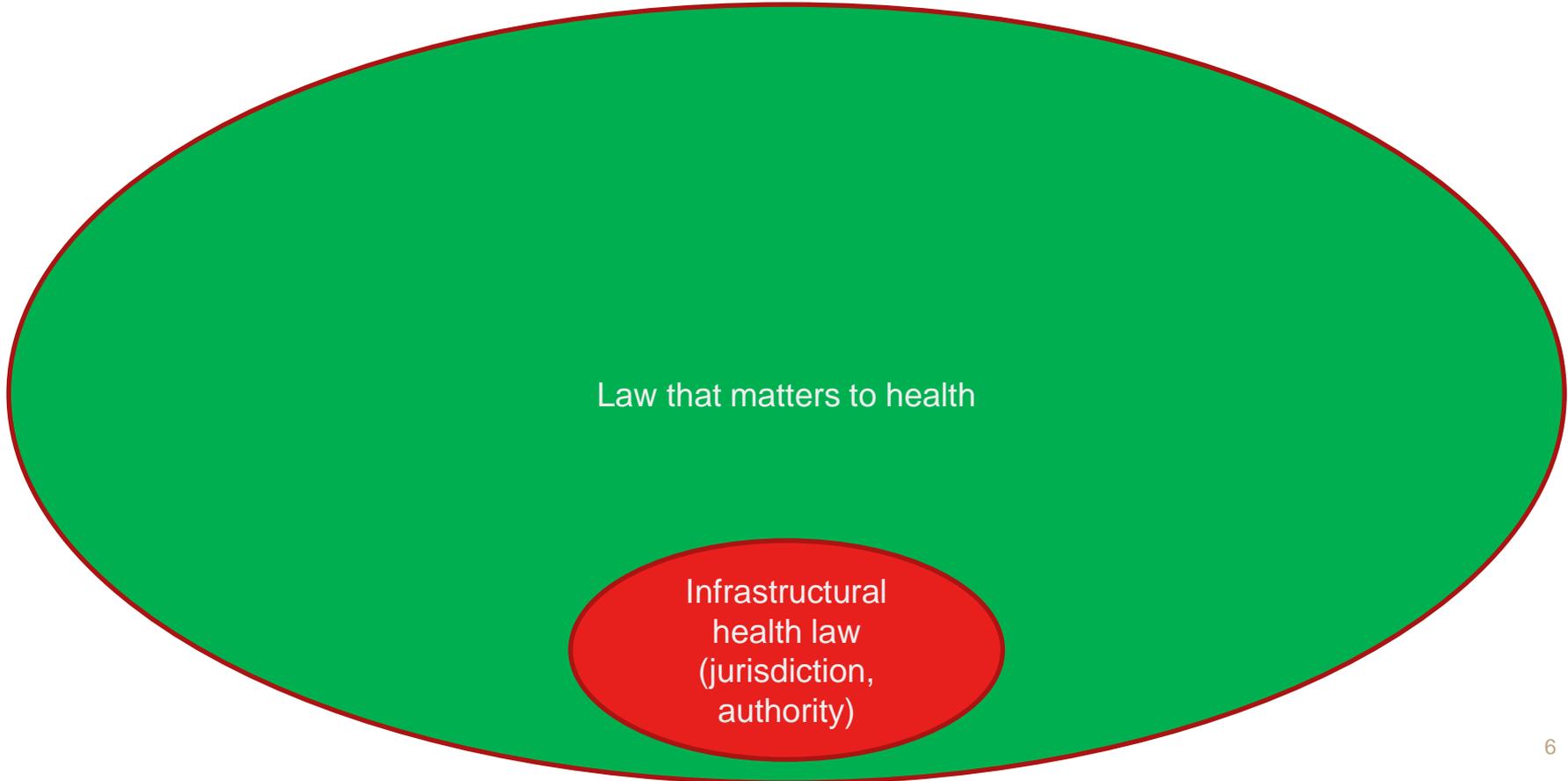


Didn't work too well:  
Anderson E, Burris S.  
Imagining a Better Public  
Health (Law) Response to  
COVID-19. *U Richmond Law  
Review*. 2022;56:955-1005.

# COVID raised basic questions about what public health law is all about



# And its targets



# 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?

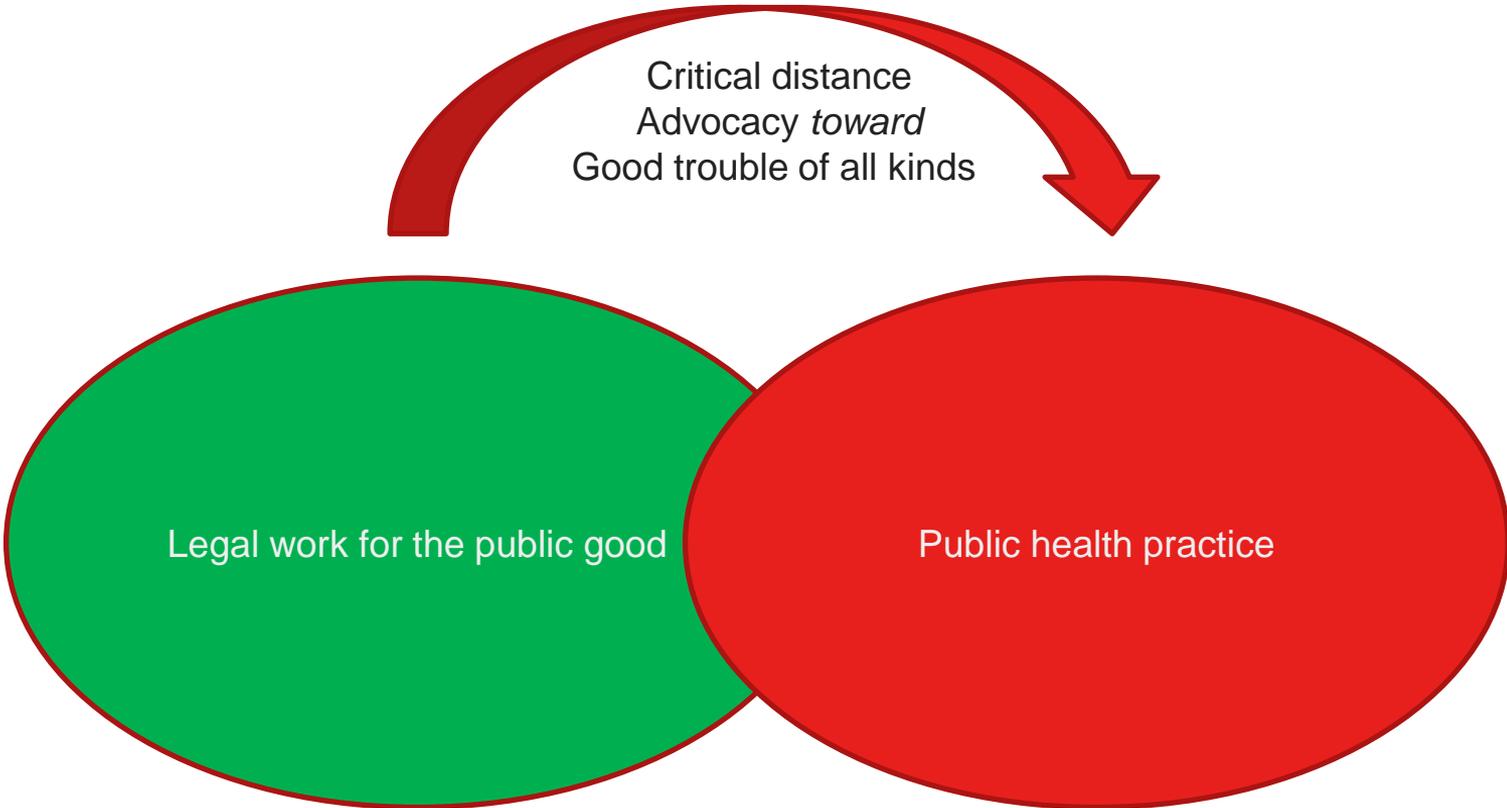
- The WHO constitution: “Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”
- Implications – and to what end?
  - Well-being of the community  
COVID-19 is a community Rx
  - Risky (and not just for the individual)
  - Physical, mental, and social well-being on the terms of the social contract and the community  
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.”
  - Social determinants is a healthier way to talk about health
  - But there are many other ways to talk about health

# “Durable Paradigm Shifts”? (Jill)



What we do as “lawyers for well-being” is  
**MORE** than just supporting public health  
agencies or pursuing disease reductions

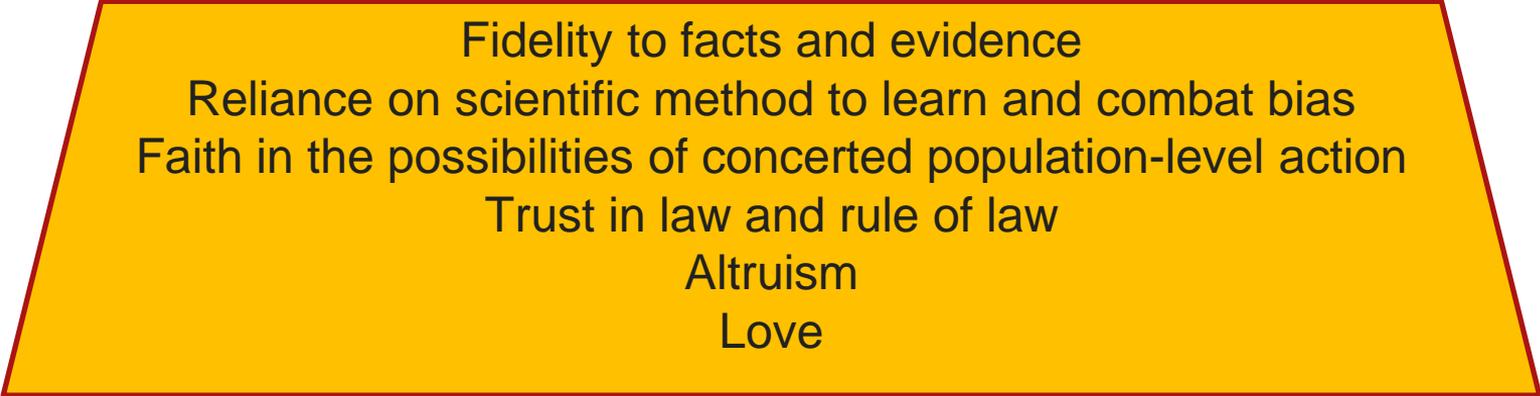
# We may even by critics sometimes



# “Durable Paradigm Shifts”? (Jill)



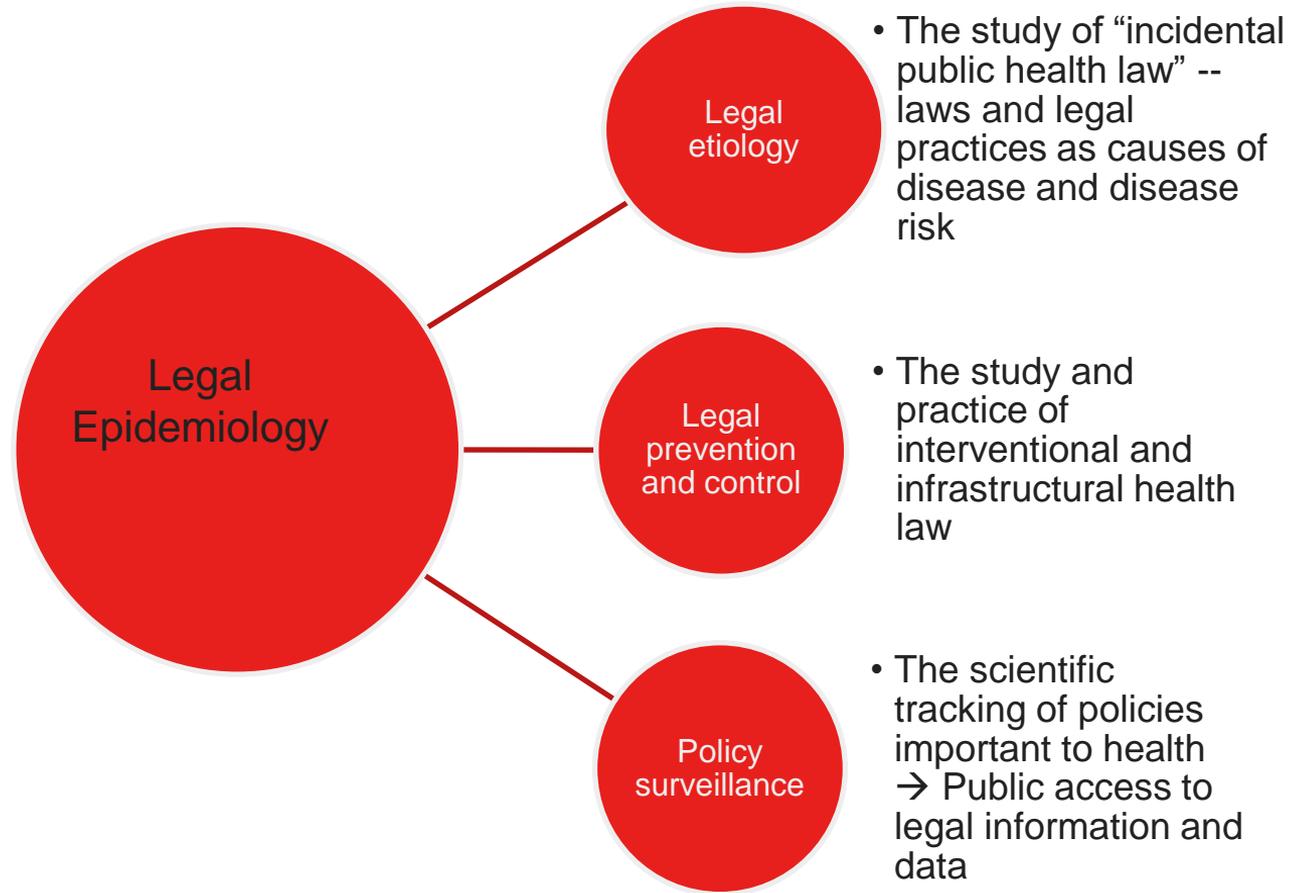
Public health provides  
a strong foundation for  
any new paradigms –  
and for OPTIMISM



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

# SO: Doubling down on legal epidemiology

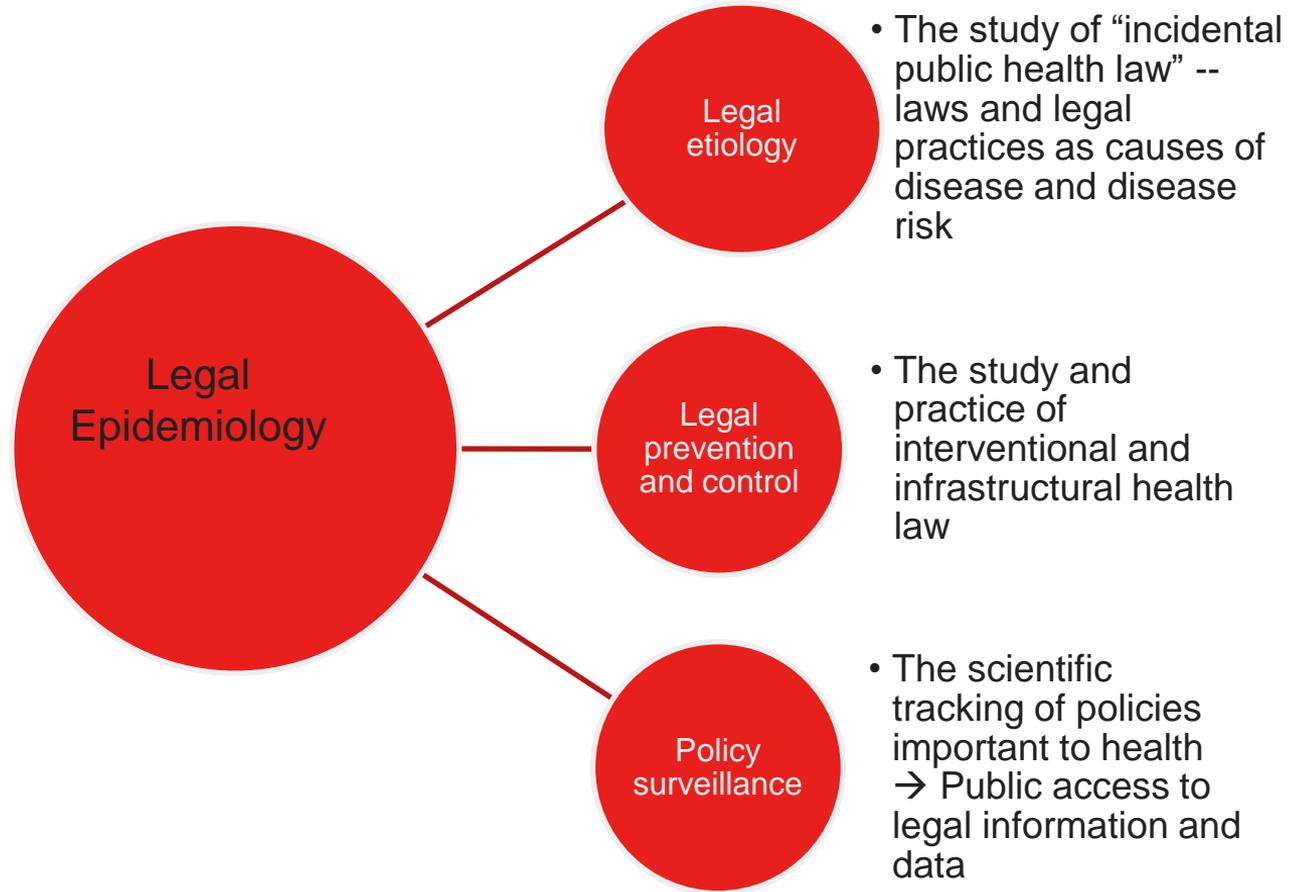
What could be more toxic to society's glue of civic capital than a system that places policymakers firmly at the center of action – they make the rules and solve the problems – but lacks any robust or systematic evaluation of the effects of the solutions official problem solvers provide



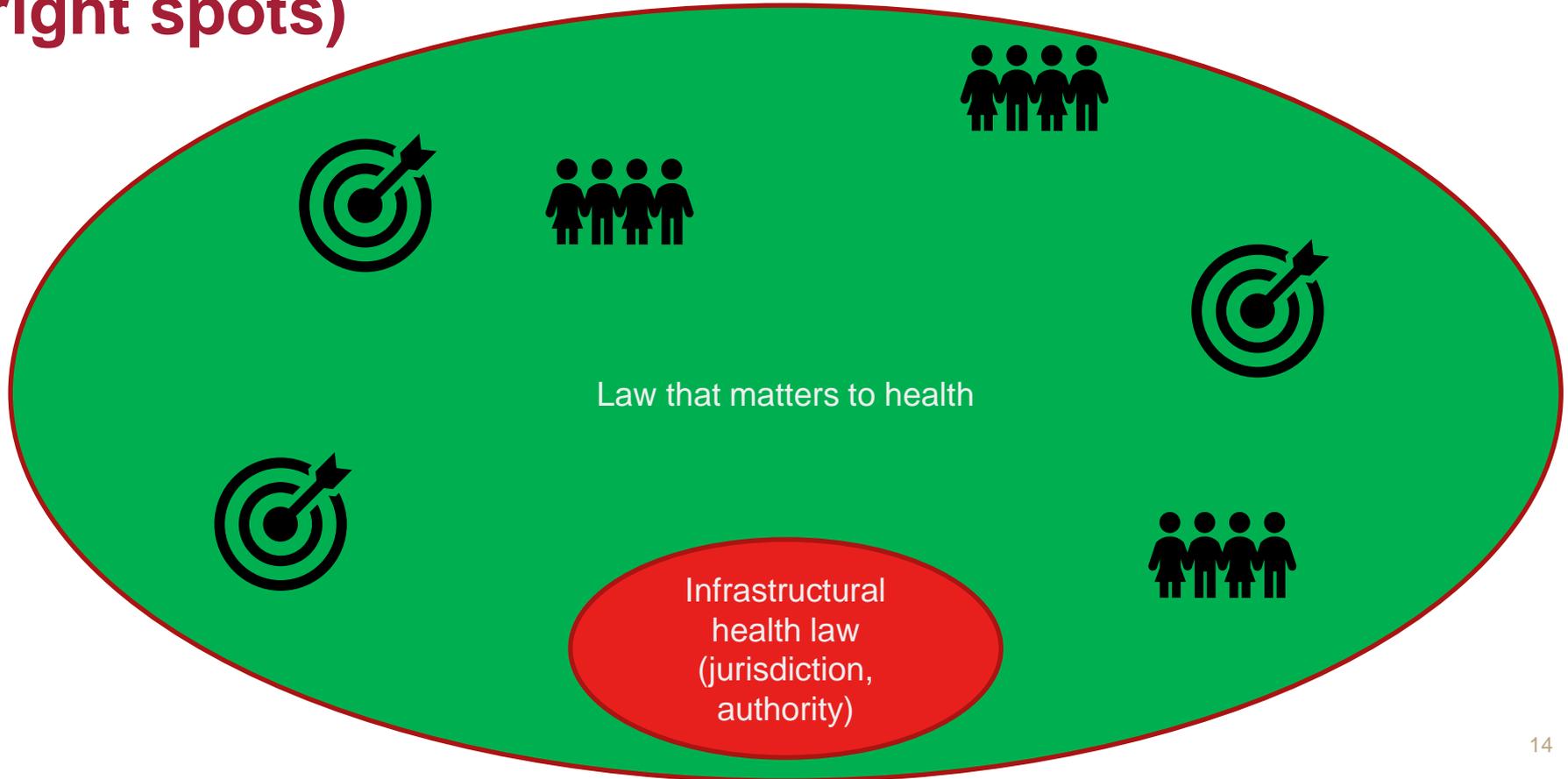
# SO: Doubling down on legal epidemiology

Legal epi stands for great ideas:

- Laws can be effective
- Policymakers can be held accountable
- Innovation is good
- Law is a tool to spread solutions



# Opportunity (big) (see Jill's bright spots)



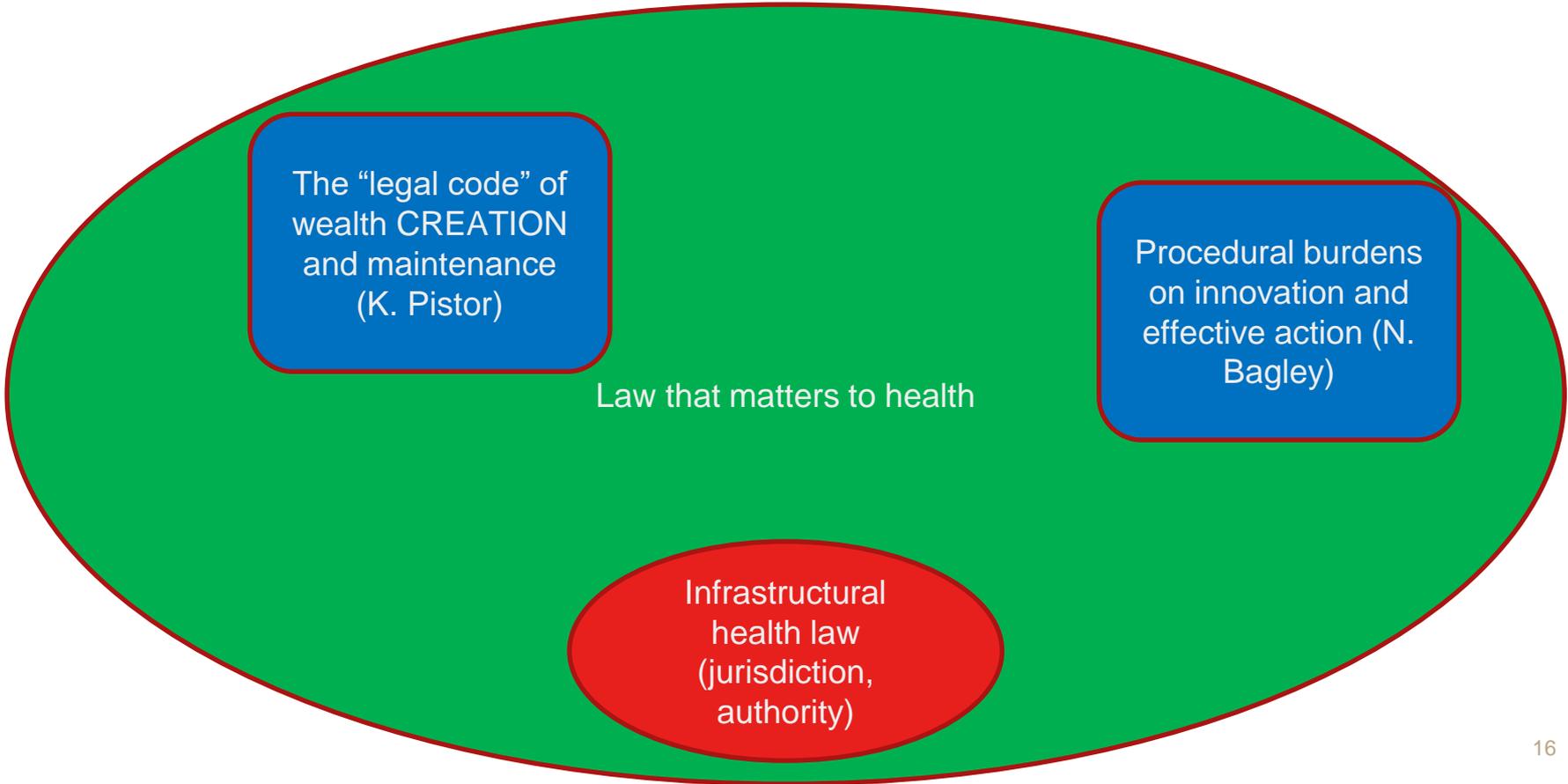
# But more targets and allies bring challenges

- 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

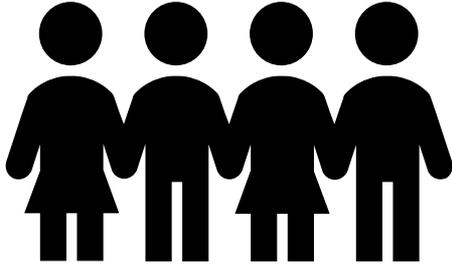


See, e.g.,  
Dawn: A new  
paradigm is  
not necessarily  
an equitable  
one

# New target examples (challenging)



# Challenging Allies



CONFIDENTIAL MEMORANDUM

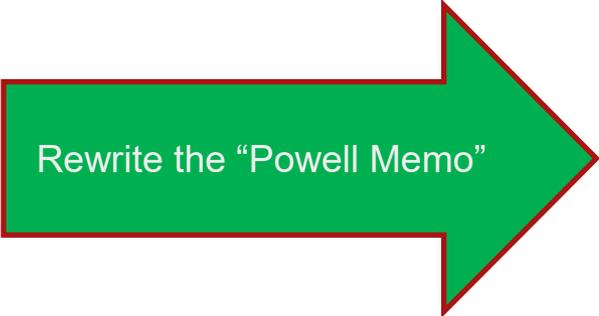
ATTACK ON AMERICAN FREE ENTERPRISE SYSTEM

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

DATE: August 23, 1971

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



Rewrite the "Powell Memo"

# 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?



*Talks  
today  
suggest  
we can!*

- 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....

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.