

# *Salus Populi*: Educating Judges on the Social Determinants of Health

Faith Khalik and Alisa Lincoln

## I. Introduction

In 2007, a New York family court removed twelve-year-old Brittany T. from her parents' custody, stating that the removal was in the best interest of the "morbidly obese child" because the parents had "consistently failed to address her severe medical concerns."<sup>1</sup> The Department of Social Services had argued, and the court agreed, that Brittany's parents willfully violated a prior court order requiring them to use all available resources to ensure her health, including enrolling her at the gym (at their own cost), taking her there at least two to three times per week, and attending a nutrition program with her (located over 100 miles away).

In reversing the trial court's decision, the appellate court took a different approach, finding that the parents, who lived in a rural Rust Belt town, were doing the best they could given the circumstances.<sup>2</sup> The court noted that although the parents had difficulty affording the gym's membership fees, Brittany attended at least once per week and participated in a bowling league. Her parents also regularly drove over two hours each way with Brittany for her appointments with a nutritionist. The two courts looked at the same facts, but saw different circumstances. Where the trial court saw the parents' behavior as reflecting willful disregard of the court order, the appellate court seemed to understand that the parents' environment shaped their options and decisions, ultimately affecting their child's health.

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1. *In re Brittany T.*, 835 N.Y.S.2d 829, 831 (N.Y. Fam. Ct. 2007).
2. *In re Brittany T.*, 852 N.Y.S.2d 475 (N.Y. App. Div. 2008).

In the United States, judicial decisions such as those in *Brittany T.* powerfully shape the health of individuals and populations.<sup>3</sup> At times, the courts' role in influencing public health has been recognized, as evidenced by the ancient legal maxim *salus populi suprema lex* ("the health of the people should be the supreme law").<sup>4</sup> American jurisprudence often views public health questions as a balancing of individual and community interests: How does a government action curtail individual liberty, and how does it benefit the common good? Many of the cases decided by courts during the pandemic have focused on such questions.<sup>5</sup> However, as public health science has continued to develop, it has become clear that a broader lens is needed.

A wide body of public health literature demonstrates how social, economic, and environmental forces exert considerable influence on the health of both individuals and populations, while also helping to shape health inequities.<sup>6</sup> These factors, known as the social determinants of health (SDOH),<sup>7</sup> are defined as the "conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks."<sup>8</sup> Examples of influential SDOH include socioeconomic status, education, safe housing, racism, job opportunities, and environmental surroundings such as air and water cleanliness.<sup>9</sup>

3. See discussion *infra* Part II.B.

4. MARCUS TULLIUS CICERO, ON THE REPUBLIC AND ON THE LAWS 184 (David Fott trans., Cornell University Press) (2014).

5. See, e.g., *Tandon v. Newsom*, 517 F. Supp. 3d 922 (N.D. Cal. 2021) (holding that COVID-19 restrictions on businesses were not violative of individuals' due process or equal protection rights because of the State and County's compelling interest in slowing the spread of the pandemic); *Roberts v. Neace*, 958 F.3d 409 (6th Cir. 2020) (holding that the State could not allow social distancing protocols in the workplace on the one hand and prohibit in-person religious services on the other); *Geller v. de Blasio*, No. 20CV3566 (DLC), 2020 WL 2520711 (S.D.N.Y. May 18, 2020) (holding that the State's restriction on non-essential gatherings during COVID-19 was a reasonable restriction on free speech).

6. William C. Cockerham et al., *The Social Determinants of Chronic Disease*, 52 AM. J. PREVENTIVE MED. S5, S10 (2017) (stating that the "debate over whether or not social factors are fundamental causes of health and disease is essentially over"); NAT'L ACADS. SCI., ENG'G, & MED., INTEGRATING SOCIAL CARE INTO THE DELIVERY OF HEALTH CARE: MOVING UPSTREAM TO IMPROVE THE NATION'S HEALTH 27 (2019) (stating that "[t]he consistent and compelling evidence on how social determinants shape health has led to a growing recognition throughout the health care sector that improving health and reducing health disparities is likely to depend—at least in part—on improving social conditions and decreasing social vulnerability").

7. The Office of Disease Prevention and Health Promotion has grouped the social determinants of health into five domains: economic stability, education access and quality, health care access and quality, neighborhood and built environment, and social and community context. *Healthy People 2030, Social Determinants of Health*, OFF. OF DISEASE PREVENTION AND HEALTH PROMOTION, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health> (last visited Nov. 19, 2022).

8. *Id.*

9. *Id.*

Although little empirical research has been done on how judges, as opposed to statutes, regulations, and policing, influence the health of individuals and populations, there are many ways in which judicial decisions affect the SDOH. This article identifies and analyzes three such pathways—judicial exercise of discretion, administrative action review, and SDOH-related constitutional case review—and demonstrates the importance of judges’ understanding how the SDOH influence the issues that come before them.

Yet despite the many ways in which the work of judges intersects with the SDOH, judicial education and training does not typically examine the SDOH and their relationship with law. And while judges may be familiar with studies involving individual medical issues, they typically receive little education on the methodologies used by public health researchers to ascertain the impact of the SDOH upon population health. Given the centrality of the SDOH to public health science,<sup>10</sup> and their importance to public health, it stands to reason that educating judges about the SDOH and their influence on individual litigants and whole populations will help them to better understand a wide range of legal issues in which the SDOH are implicated. This, in turn, will help judges more effectively protect public health and safety consistent with legal norms.

Judicial education programs (JEPs) are continuing legal education programs for judges and judicial staff that provide further education about their role in the administration of justice and issues they may face on the bench.<sup>11</sup> Nearly all states have judicial education requirements.<sup>12</sup> In addition to topics such as court management, evidence, and ethics, JEPs cover a wide range of “nonlegal” topics, including economics,<sup>13</sup> genetics,<sup>14</sup> and environmental science.<sup>15</sup> Currently no JEPs, other than the one described below, focus on the SDOH as such, or on how to interpret public health-related studies.

Since January 2020, our team has worked to develop such a program.<sup>16</sup> This article discusses the rationale for the program, titled *Salus Populi*, and outlines its contours. The article is divided into four parts. Using examples from the *Salus*

10. *Social Determinants of Health: Know What Affects Health*, CDC, <https://www.cdc.gov/socialdeterminants/cdcprograms/index.htm> (Oct. 14, 2021).
11. NAT’L ASS’N OF STATE JUD. EDUCATORS, PRINCIPLES AND STANDARDS OF JUDICIAL BRANCH EDUCATION 4 (2011), <https://nasje.org/wp-content/uploads/2011/05/principles.pdf> (last visited Feb. 19, 2022).
12. WHITE PAPER THREE: JUDICIAL EDUCATION PROGRAMS: SURVEYING THE LANDSCAPE, APPENDIX C., SALUS POPULI 1-28 (Oct. 2020), [https://www.saluspopulisdoh.com/\\_files/ugd/6accfd\\_110fe137cbb34162af1f5c465f2a8ef6.pdf](https://www.saluspopulisdoh.com/_files/ugd/6accfd_110fe137cbb34162af1f5c465f2a8ef6.pdf).
13. Henry N. Butler, *The Manne Programs in Economics for Federal Judges*, 50 CASE W.L. REV. 351 (1999).
14. *Bryson Program for Judicial Science Education*, *Bryson Program Mission*, UNC SCH. OF MED., <https://www.med.unc.edu/genetics/brysonprogram/bryson-program-mission/> (2022).
15. *Judicial Education Program*, ENV’T L. INST., <https://www.eli.org/judicial-education> (last visited Feb. 10, 2022).
16. For more information about the program see *Salus Populi*, NORTHEASTERN UNIV. (2023), <https://www.saluspopulisdoh.com/>.

*Populi* curriculum, it begins with an examination of the reasons judges should understand the SDOH and how judicial decisions affect the SDOH. Next, it describes the JEP “landscape,” as well as best practices for JEPs. Finally, the article reports on *Salus Populi*, describing its curriculum and reflecting on its fall 2021 pilot course, as well as next steps for the project.

## II. Why Should Judges Understand the SDOH?

### A. *The Social Determinants of Health*

A strong and persuasive body of evidence demonstrates the importance of the SDOH on population health and health equity.<sup>17</sup> Defined by the World Health Organization as “the non-medical factors that influence health outcomes,” the SDOH include factors such as income, education, racism, job opportunities, access to safe housing, prevalence of discrimination, and access to healthy foods.<sup>18</sup> Here, we draw from examples in the *Salus Populi* curriculum to more fully describe how the SDOH affect health.

Some SDOH are considered more “upstream” than others, as they affect access to other SDOH. Socioeconomic position, for example, is one of the most powerful upstream determinants of health.<sup>19</sup> In the *Salus Populi* curriculum, we draw upon research that engages diverse methodologies and approaches to highlight the relationships among the SDOH and a range of health outcomes. We discuss a psychiatric epidemiologic study of children in rural North Carolina led by Jane Costello to illustrate the relationship between poverty and mental health, as well as to consider the strengths and limitations of natural experiment research designs. Costello was engaged in studying the prevalence of psychiatric symptoms in North Carolina children, some of whom were from a Cherokee reservation, when the Cherokees opened a casino, providing payments to reservation families and lifting many Cherokee children out of poverty.<sup>20</sup> She capitalized on this opportunity for a natural experiment; because this occurred partway through her study, Costello was able to observe the effect of ending poverty on children’s mental health, finding a link between poverty relief and alleviation of some types of psychiatric disorders (conduct and oppositional defiant disorders), but not others (anxiety and depression).<sup>21</sup> Discussion of this research allows us to examine both a type of research method and a key SDOH, as well as the complex associations between income and mental health outcomes.

17. Paula Braveman & Laufa Gottlieb, *The Social Determinants of Health: It’s Time to Consider the Causes of the Causes*, 129 PUB. HEALTH REPS. 19 (2014).

18. *Social Determinants of Health*, WHO (2022), <https://www.who.int/health-topics/social-determinants-of-health>.

19. Braveman & Gottlieb, *supra* note 17.

20. E. Jane Costello et al., *Relationships Between Poverty and Psychopathology: A Natural Experiment*, 290 JAMA 2023 (2003).

21. *Id.*

*Salus Populi* participants also engage with data visualizations created by Dr. Sandro Galea and WCVB to understand the patterning of socioeconomic position and a range of health outcomes, including life expectancy, in the Boston area.<sup>22</sup> They see the average life expectancy in the Back Bay neighborhood, where only four percent of families live below the poverty line, is ninety years; in Roxbury, where thirty-two percent of families are below the poverty line, it is fifty-nine years.<sup>23</sup> These areas are only two miles apart and have similar proximity to health care services, but they experience vastly different health outcomes.<sup>24</sup> Participants are then asked to examine several online tools to understand the relationships among place, socioeconomic position, and health in their own communities.<sup>25</sup>

In keeping with our approach, which is informed by a socioecological model for understanding population health, the *Salus Populi* curriculum also devotes attention to multiple levels of racism as another upstream social determinant of health, and as a disrupter of mental and physical health.<sup>26</sup> Participants examine several relevant studies, including an analysis of structural racism's impact on population health at the macro level through the distribution of material conditions such as access to quality education and safe housing.<sup>27</sup> On an individual level, racism increases allostatic load, the wear and tear on the body due to cumulative stress.<sup>28</sup> Studies have shown a link between racism and cancer development and outcomes. Racial residential segregation is associated with later-stage diagnosis and higher mortality rates for lung and breast cancers.<sup>29</sup> Lastly, internalized racism, which refers to an individual's conscious or subcon-

22. *Chronicle: Tale of Two Neighborhoods*, WCVB (June 30, 2016), <https://www.wcvb.com/article/chronicle-tale-of-two-neighborhoods/8104985>; Sandro Galea, *Health Inequalities in Boston by T-Stops: A Pictorial Essay*, BOS. UNIV. SCH. OF PUB. HEALTH (Mar. 29, 2015), <https://www.bu.edu/sph/news/articles/2015/health-of-a-city-health-inequalities-in-boston-by-t-stops-a-pictorial-essay/>.

23. WCVB, *supra* note 22.

24. Galea, *supra* note 22.

25. *Life Expectancy: Could Where You Live Influence How Long You Live?* ROBERT WOOD JOHNSON FOUND., <https://www.rwjf.org/en/library/interactives/whereyouliveaffectshowlongyoulive.html> (last visited Nov. 17, 2022); VCU CTR. ON SOC'Y & HEALTH, *Mapping Life Expectancy* (Sept. 26, 2016), <https://societyhealth.vcu.edu/work/the-projects/mapping-life-expectancy.html>; *Mapping Life Expectancy*, ROBERT WOOD JOHNSON FOUND. (Sept. 11, 2015), <https://www.rwjf.org/en/library/articles-and-news/2015/09/city-maps.html>.

26. Yin Paradies et al., *Racism as a Determinant of Health: A Systematic Review and Meta-Analysis*, 10(9) PLoS ONE e0138511 (2015).

27. *Structural Racism is a Public Health Crisis: Impact on the Black Community*, AM. PUBL. HEALTH ASS'N (2021), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2021/01/13/structural-racism-is-a-public-health-crisis>; Gilbert C. Gee, *Racism as a Social Determinant of Health Inequities* (2016), <https://healthequity.globalpolicysolutions.org/wp-content/uploads/2016/12/RacismasSDOH.pdf>.

28. O. Kenrik Durur et al., *Allostatic Load Burden and Racial Disparities in Mortality*, 104 J. NAT'L MED. ASS'N. 89 (2012).

29. Hope Landrine et al., *Residential Segregation and Racial Cancer Disparities: A Systemic Review*, 4 J. RACIAL & ETHNIC HEALTH DISPARITIES 1195 (2017).

scious acceptance of a racial hierarchy, is explored as an additional mechanism through which this social determinant of health affects health and well-being.

SDOH, such as socioeconomic position and racism, can then influence other SDOH further downstream, such as housing, education, and access to clean air and water. For example, children living in impoverished areas are nearly twice as likely as children in high-income areas to have detectable blood lead levels,<sup>30</sup> which is associated with poor educational outcomes, including low test scores, even after adjusting for other predictors like poverty, maternal education, or race.<sup>31</sup> And redlining, a home loan practice through which the Federal Housing Administration would not insure mortgage loans on homes in Black neighborhoods, had long-term effects on neighborhood investment<sup>32</sup> and is associated with current disparities in birth outcomes.<sup>33</sup>

Lastly, we engage *Salus Populi* participants in discussion of current issues related to the SDOH. In our pilot effort in fall 2021, this included attention to the many COVID-19 related health inequities that arose as the result of unequal access to the SDOH.<sup>34</sup> That communities of color bore the brunt of COVID-19 early in the pandemic illustrates this phenomenon, demonstrating, for example, how employment can affect a population's health outcomes.<sup>35</sup> As people of color are overrepresented in essential work settings, such as health care facilities, grocery stores, and factories, they had increased exposure to other people, and thus were more likely to be infected with COVID-19, early in the pandemic.<sup>36</sup>

As judges strive to make the most appropriate decisions in the cases before them, a deep understanding of the SDOH, how their impact is measured, and how they interact with the law can be a valuable tool.<sup>37</sup> Indeed, to fully appreciate many of the issues before them in public health-related matters, judges must recognize how SDOH relate to individual and population-level health. As the following section explains, many types of judicial decisions affect the

30. Marissa Hauptman et al., *Individual- and Community-Level Factors Associated with Detectable and Elevated Blood Lead Levels in US Children*, 175(12) JAMA PEDIATRICS 1252 (2021).
31. Anne Evens et al., *The Impact of Low-Level Lead Toxicity on School Performance Among Children in The Chicago Public Schools: A Population-Based Retrospective Cohort Study*, 14(21) ENV'TL HEALTH (2015).
32. Jacob Krimmel, *Persistence of Prejudice: Estimating the Long Term Effects of Redlining* 1-54 (November 10, 2020) (working paper), [https://faculty.wharton.upenn.edu/wp-content/uploads/2017/11/Krimmel-Redlining-DRAFT\\_Nov2017\\_v2.pdf](https://faculty.wharton.upenn.edu/wp-content/uploads/2017/11/Krimmel-Redlining-DRAFT_Nov2017_v2.pdf).
33. Stefanie J. Hollenbach et al., *Associations Between Historically Redlined Districts and Racial Disparities in Current Obstetric Outcomes*, 4(9) JAMA NETWORK OPEN e2126707 (2021).
34. *Health Inequities and Their Causes*, WHO (Feb. 22, 2018), <https://www.who.int/news-room/facts-in-pictures/detail/health-inequities-and-their-causes>.
35. Jose F. Figueroa et al., *Community-Level Factors Associated with Racial and Ethnic Disparities in COVID-19 Rates in Massachusetts*, 39(11) HEALTH AFFAIRS 1984 (2020).
36. *Id.*
37. WHITE PAPER TWO: THE PUBLIC HEALTH LEGAL NORM: WHY JUDGES SHOULD UNDERSTAND THE SDOH, SALUS POPULI (Oct. 2020), [https://www.saluspopulisdoh.com/\\_files/ugd/6accfd\\_858644a4821142eba13b777afi400371.pdf](https://www.saluspopulisdoh.com/_files/ugd/6accfd_858644a4821142eba13b777afi400371.pdf).

SDOH. In some instances, it is clear that how well a judge does or does not understand the SDOH might affect their view of the facts before them, and thus their ultimate decision in a case.

### B. How Judicial Decisions Affect the SDOH

Although there is some empirical research analyzing law's effect on health, much of it focuses on how laws and law enforcement, not judges, affect health.<sup>38</sup> Nevertheless, the limited empirical research on judicial policymaking demonstrates that judicial decisions can significantly transform the health outcomes of individuals and communities.<sup>39</sup> Judges can influence health not only by issuing decisions directly related to health policy, such as when the Supreme Court upheld and struck down different parts of the Affordable Care Act in *NFIB v. Sebelius*,<sup>40</sup> but by rendering decisions related to the SDOH. According to one study, "federal courts made or influenced nearly one in four significant federal policy changes" from 1945 to 2004, including around fifty percent of changes in the area of civil rights and liberties, around twenty-five percent in education, around twenty-five percent in environment, around twenty percent in labor and immigration, and roughly thirty percent in social welfare.<sup>41</sup>

Empirical literature also suggests that judges in specialized trial courts can influence litigants' access to the SDOH.<sup>42</sup> Defendants in drug courts, non-adversarial specialized courts for arrestees with substance use disorder, have reduced rates of recidivism compared with defendants in traditional courts.<sup>43</sup> Reduced recidivism is a key social factor for improving health outcomes in both individuals and populations, as imprisonment is associated with the development of chronic health conditions, such as cardiovascular disease, hypertension, and

38. WHITE PAPER ONE: HOW JUDICIAL DECISIONS AFFECT POPULATION HEALTH, SALUS POPULI 8 (Oct. 2020), [https://www.saluspopulisdoh.com/\\_files/ugd/6accfd\\_3e769a816d74409cb72148ab9e37b471.pdf](https://www.saluspopulisdoh.com/_files/ugd/6accfd_3e769a816d74409cb72148ab9e37b471.pdf). See, e.g., Hannah Cooper et al., *Characterizing Perceived Police Violence: Implications for Public Health*, 94 AM. J. PUB. HEALTH 1109 (2004); Buitris et al., *Making the Case for Laws That Improve Health: A Framework for Public Health Law Research*, 88(2) THE MILBANK Q. 169, 186 (2010) (noting that "[w]e already have a substantial evidence base investigating the effectiveness of interventional public health law...").
39. Jonathan N. Kromm et al., *Public Health Advocacy in the Courts: Opportunities for Public Health Professionals*, 124(6) PUBLIC HEALTH REP. 889 (2009) (noting that "[t]he courts have a profound impact on the public's health."); Mark A. Hall, *The Role of Courts in Shaping Health Equity*, 42(5) J. HEALTH POL., POL'Y & LAW 749 (2017); MATTHEW E.K. HALL, THE NATURE OF SUPREME COURT POWER (2010); ROBERT M. HOWARD & AMY STEIGERWALT, JUDGING LAW AND POLICY: COURTS AND POLICYMAKING IN THE AMERICAN POLITICAL SYSTEM (2012); Matt Grossmann & Brendon Swedlow, *Judicial Contributions to US National Policy Change Since 1945*, 3 J. L. & CTS. 1 (2015).
40. Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012).
41. Grossmann & Swedlow, *supra* note 39, at 1, 14.
42. WHITE PAPER ONE, *supra* note 38 at 9.
43. Ojmarrh Mitchell et al., *Assessing the Effectiveness of Drug Courts on Recidivism: A Meta-Analytic Review of Traditional and Non-Traditional Drug Courts*, 40 J. CRIM. JUST. 60 (2012).

cancer, as well as with increased mortality.<sup>44</sup> More broadly, research has linked incarceration to impacts on the wider community, including on SDOH like employment, and on health itself.<sup>45</sup> Another way specialized courts, specifically domestic violence courts, influence the SDOH is by issuing protection orders.<sup>46</sup> Domestic violence is the most common form of violence against women,<sup>47</sup> and empirical studies demonstrate that protection orders reduce both the rate and severity of future violence.<sup>48</sup>

We have identified three additional pathways through which judges may impact individual and population health: 1) judicial exercise of discretion; 2) administrative action review; and 3) SDOH-related constitutional case review.<sup>49</sup>

### I. Judicial Exercise of Discretion

Trial judges often have considerable discretion in evictions and compassionate release cases, as well as child custody disputes, protection orders, diversion, and sentencing. The use of this discretion can positively or negatively affect an individual's or community's access to the SDOH, and thereby health. In addition, during the COVID-19 pandemic, judicial discretion to suspend hearings had the potential to influence access to housing, a SDOH especially important during a pandemic.

Eviction cases persuasively demonstrate the impact of judicial discretion on individual and population health, as frequent moving to new homes is associated with poor health in children, including increased chronic health conditions.<sup>50</sup> Unsurprisingly, homelessness also leads to increased chronic health conditions, as well as a sharply increased risk of premature death.<sup>51</sup> The implied warranty of habitability requires landlords to ensure their property is "habitable" and in good, safe condition.<sup>52</sup> In eviction cases for failure to pay rent, when tenants defend

44. Lauren Brinkley-Rubinstein, *Incarceration as a Catalyst for Worsening Health*, HEALTH & JUST. OCT. 2013, at 2-3; Michael Massoglia & Brianna Remster, *Linkages Between Incarceration and Health*, 134 PUB. HEALTH REP. 88 (2019).
45. Sara Wakefield & Christopher Uggen, 36 ANN. REV. OF SOCIO. 387 (2010).
46. MELISSA LABRIOLA ET AL., A NATIONAL PORTRAIT OF DOMESTIC VIOLENCE COURTS (2010).
47. Bonita Meyersfeld, *Domestic Violence, Health, and International Law*, 22 EMORY INT'L L. REV. 61 (2008).
48. Victoria L. Holt et al., *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, 288 JAMA 589, 593 (2002) (finding permanent protective orders reduce future police reported physical violence by eighty percent); TK Logan & Robert Walker, *Civil Protective Orders Effective in Stopping or Reducing Partner Violence*, CARSEY INSTITUTE POL'Y BRIEF NO. 18 (2011).
49. WHITE PAPER ONE, *supra* note 38 at 10-14.
50. Ashley Busacker & Laurin Kasehagen, *Association of Residential Mobility with Child Health: An Analysis of the 2007 National Survey of Children's Health*, 16 MATERNAL & CHILD HEALTH J. S78 (2012).
51. Bella Schanzer et al., *Homelessness, Health Status, and Health Care Use*, 97 AM. J. PUB. HEALTH 464, 464 (2007).
52. *Implied Warranty of Habitability*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/IMPLIED\\_WARRANTY\\_OF\\_HABITABILITY](https://www.law.cornell.edu/wex/IMPLIED_WARRANTY_OF_HABITABILITY) (last visited Feb. 19, 2022).



based on breach in the warranty of habitability, judges may have considerable discretion when determining whether to order a housing code inspection<sup>53</sup> or grant a stay of execution for an eviction.<sup>54</sup> In some jurisdictions, judges have discretion whether to impose a mandatory rent escrow, in which tenants alleging breach of the warranty of habitability are required to “pay” rent to a third party, to be held until the court’s determination.<sup>55</sup> Tenants’ failure to pay this escrow can lead to default judgments for the landlord.<sup>56</sup> Unfortunately, tenants may need to use their rent money to make repairs or otherwise mitigate habitability issues.<sup>57</sup> As judges consider whether to mandate rent escrow or stay evictions, it is important they understand how poverty, poor housing conditions, and health relate to one another, and how those factors affect the parties before them.

Compassionate release claims provide another example of how judicial discretion can influence the health of individuals and populations. During the COVID-19 pandemic, thousands of incarcerated people sought compassionate release from federal prisons as cases spiked in facilities across the country.<sup>58</sup> 18 U.S.C. § 3582 gives federal courts the power to reduce sentences of federal prisoners for “extraordinary and compelling reasons,” such as terminal illness, after considering factors such as the severity and nature of the crime and the defendant’s history.<sup>59</sup> In the midst of the pandemic, judges had the discretion to release incarcerated individuals with medical conditions that increase the risk of serious illness and death from COVID-19. In 2020, federal judges granted around twenty percent of motions for compassionate release, totaling 2,611.<sup>60</sup> In addition to protecting medically vulnerable individuals, such releases may have reduced the spread of disease in these closely quartered communities, where social distancing is nearly impossible. In some cases, petitioners presented studies relating to how particular SDOH may increase their likelihood of contracting

53. Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. CHI. L. REV. 145, 181 (2020); see also *Jurisdiction and Work of the Housing Court*, MASS.GOV (Mar. 18, 2022), <https://www.mass.gov/info-details/jurisdiction-and-work-of-the-housing-court>.
54. Summers, *supra* note 53, at 180, n.169.
55. Paula A. Franzese et al., *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 RUTGERS U.L. REV. 1, 13-18 (2016).
56. David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CAL. L. REV. 389, 431 (2011).
57. *Id.* at 433.
58. As of November 18, 2022, 48,018 federal inmates contracted and recovered from COVID-19, and 309 have died. *COVID-19 Coronavirus*, FEDERAL BUREAU OF PRISONS, <https://www.bop.gov/coronavirus/> (last visited Nov. 18, 2022). From March 2020 through May 2020, 10,940 prisoners applied for compassionate release. Joseph Neff & Keri Blakinger, *Thousands of Sick Federal Prisoners Sought Compassionate Release. 98 Percent Were Denied.*, THE MARSHALL PROJECT (Oct. 7, 2020), <https://www.themarshallproject.org/2020/10/07/thousands-of-sick-federal-prisoners-sought-compassionate-release-98-percent-were-denied>.
59. 18 U.S.C. § 3582(c)(1)(A)(i), (d).
60. U.S. SENTENCING COMM’N, U.S. SENTENCING COMMISSION COMPASSIONATE RELEASE DATA REPORT: CALENDAR YEAR 2020 (2021).

COVID-19 in prison.<sup>61</sup> Judicial training on public health methodology would undoubtedly help in understanding the meaning of such studies, and whether they are useful in the case at hand.

## 2. Administrative Action Review

State and federal judges review challenges to administrative agencies' actions and regulations. Through this pathway, judges help shape administrative actions in areas with a clear nexus to the SDOH, including product and workplace safety, environmental protection, education, health insurance, public benefits, transportation, and recently, measures put in place during the COVID-19 pandemic to stop the spread of disease. Although empirical research on how judicial review of administrative actions impacts health is limited, several cases can help illustrate this connection.<sup>62</sup>

The Supreme Court's decision in *Alabama Association of Realtors v. HHS* offers one example of how an understanding of public health, and thus of what constitutes a public health measure, can affect case outcomes.<sup>63</sup> Here, the Court invalidated the CDC's nationwide eviction moratorium, saying it was "difficult to imagine" how plaintiffs could lose the case, as the measure only "indirectly" prevented disease spread.<sup>64</sup> The Court's language does not reflect a full understanding of housing's impact on public health. Although the eviction moratorium was not a traditional measure to impede disease spread, such as fumigation or pest extermination, secure housing is essential to quelling the spread of infectious disease. Research shows states lifting their eviction moratoria had increased mortality rates compared with states keeping moratoria in place.<sup>65</sup>

Judicial review of Medicaid work requirements offers another example of how judicial review of administrative actions can influence the SDOH. In January 2018, the Centers for Medicare and Medicaid Services (CMS) began allowing states to submit waivers for pilot programs that include work requirements.<sup>66</sup> Shortly thereafter, CMS approved the "Kentucky HEALTH" project, which included work requirements that by the state's own estimate would result in over 95,000 adults losing Medicaid over five years.<sup>67</sup> After the Kentucky HEALTH project was approved, health law advocates quickly sued the Trump

61. *E.g.*, *United States v. Harris*, 505 F. Supp. 3d 1152, 1163 (D. Kan. 2020).

62. For more examples, see WHITE PAPER ONE, *supra* note 38, 12-13.

63. *Alabama Assn. of Realtors v. Dept. of Health and Human Services*, 141 S. Ct. 2485, 2488 (2021).

64. *Id.*

65. Kathryn M. Leifheit et al., *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality*, 190(12) AM. J. EPIDEMIOLOGY 2563 (2021).

66. Anita Cardwell, *A Snapshot of State Proposals to Implement Medicaid Work Requirements Nationwide*, NAT'L ACAD. FOR STATE HEALTH POL'Y (last updated Aug. 24, 2021), <https://www.nashp.org/state-proposals-for-medicaid-work-and-community-engagement-requirements/#toggle-id-1-closed>.

67. Class Action Complaint for Declaratory and Injunctive Relief at 5, *Stewart v. Hargan*, No. 1:18-cv-00152, at 3 (D. D.C. Jan. 24, 2018).

administration, arguing CMS bypassed Congress by allowing the project to “transform” Medicaid in Kentucky.<sup>68</sup> Similar work requirements were passed in other states.<sup>69</sup> Lower courts determined that the waivers “fundamentally alter the design and purpose of Medicaid,” striking down the work requirements.<sup>70</sup> One court, in analyzing the Arkansas waiver, reasoned that it was arbitrary and capricious because Medicaid’s principal objective is providing health coverage to poor people, and only waivers “likely to assist in promoting the objectives” of Medicaid are appropriate.<sup>71</sup> Because the waiver, the court reasoned, did not promote that objective, it was unlawfully approved.<sup>72</sup> These decisions affected many people’s access to health care, which is an important social determinant of health. Medicaid coverage is associated with improved diabetes, renal disease, and hypertension outcomes,<sup>73</sup> as well as improved self-reported health and decreased mortality rates.<sup>74</sup>

Judicial review of the Trump administration’s change to the public charge definition provides another recent example of judges’ potential to influence public health through review of administrative action. Immigrants deemed likely to become public charges may be denied permanent residency.<sup>75</sup> In 2019, the U.S. Citizenship and Immigration Services (USCIS) issued the public charge rule, which expanded the services that, when utilized, would qualify a noncitizen as a “public charge.” Newly included were the Supplemental Nutrition Assistance Program, Medicaid, and housing benefits such as Section 8 and public housing.<sup>76</sup> This rule decreased immigrants’ access to health-promoting resources such as affordable food, housing, and health care.<sup>77</sup> In numerous

68. *Id.*

69. JENNIFER A. STAMAN, *MEDICAID WORK REQUIREMENTS: AN END TO THE LITIGATION?* (Mar. 12, 2021).

70. *Id.* at 2.

71. *Gresham v. Azar*, 363 F. Supp.3d 165, 178 (D.C. Cir. 2020), *vacated*, 142 S. Ct. 1665 (2022).

72. *Id.* at 181.

73. *Policy Basics: Introduction to Medicaid*, CTR. ON BUDGET AND POL’Y PRIORITIES (Apr. 14, 2020), <https://www.cbpp.org/research/health/introduction-to-medicaid>.

74. Manatt, Phelps & Phillips LLP, *Medicaid’s Impact on Health Care Access, Outcomes and State Economies*, ROBERT WOOD JOHNSON FOUND. (Feb. 1, 2019), <https://www.rwjf.org/en/library/research/2019/02/medicaid-s-impact-on-health-care-access-outcomes-and-state-economies.html>.

75. Immigration and Nationality Act, 8 U.S.C. § 1182.

76. See the original rule from 1999, versus the 2019 revisions. Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689, 28692 (May 20, 1999); *Public Charge Fact Sheet*, U.S. CITIZEN AND IMMIGRATION SERVICES (Mar. 10, 2021), <https://www.uscis.gov/archive/public-charge-fact-sheet>. Previously, only receipt of cash benefits was taken into consideration. Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689, 28692 (May 20, 1999).

77. Leighton Ku, *New Evidence Demonstrates that the Public Charge Rule Will Harm Immigrant Families and Others*, HEALTH AFFAIRS (Oct. 9, 2019), <https://www.healthaffairs.org/doi/10.1377/hblog20191008.70483/full/>.

cases, judges were asked whether, in issuing the rule, the agency acted within the scope of the statute or was arbitrary and capricious. After extended litigation, in which several courts issued preliminary injunctions that were later stayed by the Supreme Court,<sup>78</sup> the rule was vacated in March 2021.<sup>79</sup> Litigation related to the rule, however, continues.<sup>80</sup>

### 3. Federal and State Constitutional Cases

Federal and state constitutional decisions can also affect the SDOH, and thus the health of individuals and populations. One example comes from judicial review of sugar-sweetened beverage (SSB) regulations.<sup>81</sup> Excess consumption of SSBs is associated with negative health outcomes in children and adults, including obesity, tooth decay, Type 2 diabetes, and heart disease.<sup>82</sup> Research shows that government interventions, such as SSB taxes, can reduce SSB consumption.<sup>83</sup> In cases involving SSBs, an understanding of how the built environment, including advertising, can influence individuals and communities to make particular choices would be useful for judges.

SSB regulations have been challenged on state and federal constitutional grounds. In *Illinois Retail Merchants Ass'n v. The Cook County Department of Revenue*,

78. Medha D. Makhlof & Jasmine Sandhu, *Immigrants and Interdependence: How the COVID-19 Pandemic Exposes the Folly of the New Public Charge Rule*, 115 NW. U.L. REV. 146, 150–51 (2020).
79. *Inadmissibility on Public Charge Grounds Final Rule: Litigation*, U.S. CITIZEN AND IMMIGR. SERVS. (Apr. 23, 2021), <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/inadmissibility-on-public-charge-grounds-final-rule-litigation>.
80. Adam Liptak, *Supreme Court Weighs Whether States May Defend a Trump Immigration Policy*, N.Y. TIMES, (Feb. 23, 2022), <https://www.nytimes.com/2022/02/23/us/politics/supreme-court-public-charge-rule.html>. In September 2022, the DHS published a final rule that is effective on December 23, 2022. Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55,472 (Sept. 9, 2022). The rule closely follows the 1999 field guidance. Drishti Pillai & Samantha Artiga, *2022 Changes to the Public Charge Inadmissibility Rule and the Implications for Health Care*, KFF (May 5, 2022), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/2022-changes-to-the-public-charge-inadmissibility-rule-and-the-implications-for-health-care/>.
81. WHITE PAPER ONE, *supra* note 38 at 13.
82. Sara N. Bleich & Kelsey A. Vercammen, *The Negative Impact of Sugar-Sweetened Beverages on Children's Health: An Update of The Literature*, 5(6) BMC OBESITY (2018); Fumiaki Imamura et al., *Consumption of Sugar Sweetened Beverages, Artificially Sweetened Beverages, and Fruit Juice and Incidence of Type 2 Diabetes: Systematic Review, Meta-analysis, and Estimation of Population Attributable Fraction*, BMJ 2015;351:h3576; Vasanti S. Malik et al., *Sugar Sweetened Beverages, Obesity, Type 2 Diabetes and Cardiovascular Disease Risk*, 121 CIRCULATION 1356 (2010); Vasanti S. Malik, *Sugar-Sweetened Beverages and Cardiometabolic Health: An Update of the Evidence*, 32 CURRENT OP. IN CARDIOLOGY 572 (2017).
83. Maite Redondo et al., *The Impact of The Tax on Sweetened Beverages: A Systematic Review*, 1083(3) AM. J. CLINICAL NUTRITION 548 (2018). Jennifer Falbe et al., *Impact of the Berkeley Excise Tax on Sugar-Sweetened Beverage Consumption*, 106 AM. J. PUB. HEALTH 1865 (2016); Andrea M. Teng et al., *Impact of Sugar-Sweetened Beverage Taxes on Purchases and Dietary Intake: Systematic Review and Meta-Analysis*, 20 OBESITY REVS. 1187 (2019); John Cawley et al., *The Economics of Taxes on Sugar-Sweetened Beverages: A Review of the Effects on Prices, Sales, Cross-Border Shopping, and Consumption*, 39 ANN. REV. NUTRITION 317 (2019); Tessa Bollard et al., *Effects of Plain Packaging, Warning Labels, and Taxes on Young People's Predicted Sugar-Sweetened Beverage Preferences: An Experimental Study*, 13(95) INT'L J. BEHAVIORAL NUTRITION & PHYSICAL ACTIVITY (2016).

an Illinois state court upheld a one-cent-per-ounce tax on SSBs in the face of challenges that it violated the uniformity clause of the Illinois Constitution by treating pre-made sweetened beverages differently from handmade, on-demand sweetened beverages.<sup>84</sup> The court found the classification justified, accepting the county's reasoning that ready-to-drink SSBs are more widely available than made-to-order SSBs, and that taxing made-to-order SSBs would be too burdensome, as sellers would need to determine taxability at the time of sale.

In 2016, in *American Beverage Association Ass'n v. City and County of San Francisco*, a district court in California held that San Francisco's requirement that outdoor SSB advertisements warn consumers of the potential negative health outcomes of SSBs likely did not violate the First Amendment, because the warning was "factual and accurate" and reasonable "given [the city's] interest in public health and safety."<sup>85</sup> The Ninth Circuit later reversed this decision, finding the regulation did chill First Amendment-protected commercial speech.<sup>86</sup> The court recognized that the city had a substantial government interest in protecting its citizens' health.<sup>87</sup> However, unlike the district court, the Ninth Circuit found the mandated warning "misleading" and its accuracy "in reasonable dispute," dismissing the information on the health risks of SSBs as simply the city's "disputed policy views."<sup>88</sup>

### III. Judicial Education Programs

#### *A. The Current Landscape*

JEPs took off in the 1960s in response to increasing case backlog, with enthusiastic support from Supreme Court Justice Tom Clark.<sup>89</sup> Since then, they have become an integral part of the judicial experience. Continued expansion was partly due to new state requirements that judges and judicial staff complete a certain amount of continuing judicial education credits.<sup>90</sup> Today, most jurisdic-

84. *Ill. Retail Merch. Ass'n v. Cook Cty. Dep't of Revenue*, No. 17 L 50596, 2017 WL 3318078, at \*2, 12 (Ill. Cir. Ct. July 28, 2017).

85. *American Beverage Ass'n v. City & Cty. of San Francisco*, 187 F. Supp. 3d 1123 (N.D. Cal. 2016).

86. *American Beverage Ass'n v. City & Cty. of San Francisco*, 916 F.3d 749 (9th Cir. 2019).

87. *American Beverage Ass'n v. City & Cty. of San Francisco*, 871 F.3d 884, 898 (9th Cir. 2017).

88. *Id.* at 895-96. For further analysis, see Micah Berman et al., *American Beverage Association V. San Francisco: When the First Amendment Jeopardizes Public Health*, PUB. HEALTH WATCH (Sept. 25, 2017), <https://www.publichealthlawwatch.org/blog/2017/9/25/american-beverage-association-v-san-francisco-when-the-first-amendment-jeopardizes-public-health>.

89. Robert G. Bone, *Judging as Judgment: Tying Judicial Education to Adjudication Theory*, 2015 J. DISP. RESOL. 129, 131 (2015).

90. Evan Murphy et al., *Motivations, Barriers, and Impact of Continuing Judicial Education: A Survey of U.S. Judges*, 57 CT. REV. 40, 41 (2021). No judicial education requirements have been found for federal judges. For example, see *About the FJC*, FED. JUD. CTR., <https://www.fjc.gov/about> (last visited Feb. 11, 2022) (describing the duties of the Federal Judicial Center to educate federal judges but not a requirement that judges attend trainings).

tions require judges to complete judicial education courses yearly, and some require education in particular subject categories.<sup>91</sup> For example, Pennsylvania requires every judge to complete a minimum of three hours of continuing education in judicial ethics, and a minimum of nine hours of continuing education in judicial practice and other related areas every year.<sup>92</sup>

Not only do most states recognize the importance of JEPs,<sup>93</sup> but many nations do as well.<sup>94</sup> The International Organization for Judicial Training (IOJT) urges all nations to support judicial training programs and “[e]stablish systems to ensure that all members of the judiciary are enable[d] to undertake training.”<sup>95</sup> IOJT further declares that “[j]udicial training is essential to ensure high standards of competence and performance. Judicial training is fundamental to judicial independence, the rule of law, and the protection of the rights of all people.”<sup>96</sup>

JEPs can be categorized into three broad categories: a) nationwide JEPs, b) state-specific JEPs, and c) subject-matter-focused JEPs.<sup>97</sup>

Nationwide JEPs are typically organized by national organizations for state and federal judges across the country.<sup>98</sup> These organizations host their own JEPs and provide a wide array of courses on subjects ranging from court procedure and administration to specific areas of the law. For example, the nonprofit National Judicial College offers courses on topics such as trial processes, management skills, and substantive areas of the law, at its Reno campus as well as at remote sites and online.<sup>99</sup>

In contrast, state-specific JEPs are specifically designed for judges within a particular state. Some state-specific JEPs are delivered by state agencies and are

91. WHITE PAPER THREE, *supra* note 12.

92. 204 PA. CODE §31.4 (2022).

93. The states that explicitly require judicial continuing legal education are: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, and Washington. WHITE PAPER THREE, *supra* note 12.

94. *Declaration of Judicial Training Principles*, INT’L ORG. FOR JUD. TRAINING, [https://www.unodc.org/res/ji/import/international\\_standards/declaration\\_of\\_judicial\\_training\\_principles/declaration\\_of\\_judicial\\_training\\_principles.pdf](https://www.unodc.org/res/ji/import/international_standards/declaration_of_judicial_training_principles/declaration_of_judicial_training_principles.pdf) (last visited Feb. 24, 2022).

95. *Id.* at § 4(ii).

96. *Id.* at § 1.

97. WHITE PAPER THREE, *supra* note 12.

98. These organizations include the National Judicial College (NJC), the National Center for State Courts (NCSC), American Judges Association (AJA), Federal Judicial Center (FJC), the Judicial Division of the ABA, and the National Association of Women Judges (NAWJ). *Course Catalog*, NAT’L JUD. COLL. (2022), <https://www.judges.org/courses/>; *Mission & History*, NAT’L CTR. FOR STATE CTS. (2022), <https://www.ncsc.org/about-us/mission-and-history>; *National Conference of Federal Trial Judges*, AM. BAR ASS’N (2022), [https://www.americanbar.org/groups/judicial/conferences/federal\\_trial\\_judges/](https://www.americanbar.org/groups/judicial/conferences/federal_trial_judges/).

99. *Course Catalog*, NAT’L JUD. COLL. (2022), <https://www.judges.org/courses/>.

funded by the state judiciary.<sup>100</sup> Others are delivered by nonprofit organizations<sup>101</sup> or state universities<sup>102</sup> and are supported by various private and public sources.<sup>103</sup>

Subject-matter JEPs are usually privately sponsored educational programs that focus on nonlegal disciplines that are relevant to cases that come before the court. Such disciplines include domestic violence,<sup>104</sup> environmental science,<sup>105</sup> substance use disorder,<sup>106</sup> and economics.<sup>107</sup> Subject-matter JEPs are usually funded either by grants from federal agencies or by private foundations, such as industry-associated trade groups.<sup>108</sup>

### *B. Components of Effective Courses*

Studies conducted by judicial educators provide insight into what makes particular JEPs attractive to judges.<sup>109</sup> Judges surveyed have indicated that course content and curriculum, as well as practical matters, such as funding and accreditation, are critical in their determination of whether to take or recommend a course.<sup>110</sup>

According to educators and judges, effective JEPs embrace active learning, utilizing varied content delivery methods and experiential learning techniques.<sup>111</sup> This preference is borne out by the course evaluations of Canada's National Judicial Institute (NJI), in which judges routinely expressed preference for

100. For example, *Judicial Branch Education Division*, ARK. JUD., <https://www.arcourts.gov/administration/education> (last visited Feb. 24, 2022).

101. For example, *About the Franklin N. Flaschner Judicial Institute*, FLASCHNER JUD. INST., <https://www.flaschner.org/about/> (last visited Feb. 24, 2022).

102. *North Carolina Judicial College*, UNC SCH. OF GOV'T (2022), <https://www.sog.unc.edu/resources/microsites/north-carolina-judicial-college>.

103. See, e.g., *id.*; FLASCHNER JUD. INST., *supra* note 101.

104. Kristin Kalsem, *Judicial Education, Private Violence, and Community Action: A Case Study in Legal Participatory Action Research*, 22 J. GENDER RACE & JUST. 41, 44 (2019).

105. *Judicial Education Program*, ENV'T LAW INST., <https://www.eli.org/judicial-education> (last visited Feb. 24, 2022).

106. *Basic Substance Abuse for Judges*, UNC SCH. OF GOV'T (2022), <https://www.sog.unc.edu/courses/basic-substance-abuse-judges>.

107. *Mason Judicial Education Program*, ANTONIN SCALIA L. SCH'L: L. & ECON. CTR., <https://masonlec.org/divisions/mason-judicial-education-program/> (last visited Feb. 24, 2022).

108. See, e.g., NATIONAL JUDICIAL INSTITUTE ON DOMESTIC VIOLENCE, <https://njidv.org/> (last visited Nov. 18, 2022); Chris Young et al., *Corporations, Pro-business Non-profits Foot Bill for Judicial Seminars*, THE CTR FOR PUB. INTEGRITY (Mar. 28, 2013), <https://publicintegrity.org/politics/corporations-pro-business-nonprofits-foot-bill-for-judicial-seminars/>.

109. See WHITE PAPER FOUR: POSSIBLE PATHWAYS FOR DEVELOPING A SDOH JUDICIAL EDUCATION PROGRAM, SALUS POPULI (Oct. 2020), [https://www.saluspopulisdoh.com/\\_files/ugd/6accfd\\_13a7bec3d127453f82564cfa4c2af171.pdf](https://www.saluspopulisdoh.com/_files/ugd/6accfd_13a7bec3d127453f82564cfa4c2af171.pdf).

110. T. Brettel Dawson, *Judicial Education: Pedagogy for a Change*, 2015 J. DISP. RESOL. 175, 188 (2015); Murphy et al., *supra* note 90, at 41.

111. Dawson, *supra* note 110, at 188.

programs that incorporated both lectures and interactive activities, were relevant to their work, allowed for participants to share ideas with one another, and included small-group discussions.<sup>112</sup>

The importance of a strong, integrated curriculum that centers on helpful information, development of judicial skills, and the growth of the judge is also underscored by JEP educators.<sup>113</sup> A recent study by Murphy et al. investigating the motivations and barriers for judges participating in continuing education reached a similar conclusion; the most common motivation for JEP participation was professional growth.<sup>114</sup>

Beyond course structure and curriculum, judges considering JEPs are also concerned with practicalities. Judges from Murphy et al.'s study indicated fulfillment of a continuing education requirement as another important motivation.<sup>115</sup> In the same study, judges indicated the chief barriers to JEP participation were a lack of funding and an inability to take time away from the bench.<sup>116</sup>

The experiences of educators and participants indicate JEPs should provide a program that will enhance judges' personal growth, offer free courses with continuing education credit, and ensure programming that is relevant to judges.<sup>117</sup> To meet these goals, judges should be involved in both the planning and teaching of JEPs.<sup>118</sup> Further, JEPs should have adequate resources, including sufficient funding and strong faculty development.<sup>119</sup> Planning committees can also help ensure the goals of the JEP are met.<sup>120</sup>

### C. SDOH-Adjacent Courses

Although no JEPs in the United States currently address the SDOH as such (with the exception of *Salus Populi*), several JEPs address related topics. State and national JEPs cover topics such as substance use disorder (SUD) and racial bias, and outside the United States, Canada's NJI has provided classes on topics relating to the SDOH.

The National Judicial College provides various JEPs addressing SUD.<sup>121</sup> In the sixteen-part webinar "What Judges Need to Know about Substance Use

112. *Id.*

113. Charles S. Claxton, *Characteristics of Effective Judicial Education Programs*, 76 JUDICATURE 11, 14 (1992).

114. Murphy et al., *supra* note 90, at 40-44.

115. *Id.* at 43.

116. *Id.* at 43-44.

117. *Id.* at 43.

118. Claxton, *supra* note 113, at 13-14.

119. *Id.*

120. *Id.*

121. *The Neuroscience of Substance Use Disorders Recovery*, THE NAT'L JUD. COLL. (2022), <https://www.judges.org/courses/the-neuroscience-of-substance-use-disorders-and-recovery/>; *Substance Use Disorder in the Courtroom*, THE NAT'L JUD. COLL. (Dec. 1., 2021), <https://www.judges.org/>



Disorder,” judges learn about the neuroscience of SUD, the effects of substances on the brain, and signs of impairment for specific substances.<sup>122</sup> Judges also develop skills to effectively handle SUD issues in the courtroom.<sup>123</sup> In one segment, “Neuroscience of Substance Use Disorder Recovery,” judges learn “how drugs and alcohol ‘reward’ the brain to create the path for addiction” and the effects of various different substances, discussing the implications for addiction treatment and recovery.<sup>124</sup>

As part of its initiative to address the opioid epidemic in the Appalachian/Midwest Region, the Appalachian/Midwest Regional Judicial Opioid Initiative developed a regional JEP for judges from Michigan, Illinois, Indiana, Ohio, West Virginia, Kentucky, Tennessee, and North Carolina.<sup>125</sup> The JEP centered on opioid use disorder (OUD) and medications for opioid use disorder (MOUD), with topics including “neurobiology of OUD and MOUD, stigma and OUD patient rights, evidence-based screening and assessment for OUD, outcomes of MOUD for criminal justice populations, relapse management, and the role of MOUD in long-term recovery....”<sup>126</sup> This JEP was a pilot program, completed in early 2021.<sup>127</sup> It is unclear whether it will continue.

Several organizations have produced or are in the process of developing JEPs on racism, though none to date seems to center on the connection between racism and health. The National Judicial College has a number of webinars for judges on racial justice.<sup>128</sup> Webinars include “Racial Fairness and the Courts: A Conversation on Reforming the Criminal and Civil Justice System to Overcome Systemic Racism” and “Racial Fairness and the Courts: The Role of the Judge in Achieving Racial Justice in the Time of Racial Turmoil.”<sup>129</sup> The National Juvenile Defender Center is producing a JEP titled “Judicial Education Series: Historical Roots of Racism & its Contribution to our Current Juvenile Legal System” for juvenile court judges.<sup>130</sup> Delivered via a partnership with the State Justice Institute, National Juvenile Defender Center, and NCJFCJ, this JEP will

courses/substance-use-disorder-in-the-courtroom/; *Drugs in America Today: What Every Judge Needs to Know*, THE NAT’L JUD. COLL. (May 25, 2022), <https://www.judges.org/courses/drugs-in-america-today-what-every-judge-needs-to-know/>.

122. *The Neuroscience of Substance Use Disorder Recovery*, *supra* note 121.

123. *Id.*

124. *Id.*

125. *R7OI State and Partner Agency Resources*, NCSC (2022), <https://www.ncsc.org/amw-rjoi/resources>; PROJECT ECHO FOR THE JUDICIARY RESULTS FROM PRE- AND POST-TRAINING PARTICIPANT SURVEYS, WAYNE STATE SCHOOL OF SOCIAL WORK CTR. FOR BEHAVIORAL HEALTH AND JUST. (May 2021).

126. *Id.* at 2.

127. *Id.*

128. *Conversations on Racial Justice*, THE NAT’L JUD. COLL. (2022), <https://www.judges.org/racial-justice/>.

129. *Id.*

130. *Training, Education, and Workforce Development*, STATE JUST. INST. (2022), <https://www.sji.gov/priority-investment-areas/training-education-and-workforce-development/>.

educate a select group of judges to “develop strategies that counteract systemic biases in their courtrooms and communities.”<sup>131</sup>

Canada’s NJI provided Canadian judges with SDOH-adjacent content through its Social Context Education Course (SCEP). Established in 1996, and later phased out as social context became integrated into all NJI courses, SCEP was a unique initiative intended to provide Canadian judges with education and resources to better understand systemic factors, such as race, gender, and socio-economic status, that may affect the parties and issues before them in court. The program was the “direct result of public pressure for the judiciary to become more representative of the population it serves and for the justice system to acknowledge and respond to concerns about systematic discrimination practiced in it.”<sup>132</sup>

SCEP’s curriculum guided judges to better understand the existing systemic barriers and how these factors may disadvantage individuals who appear before a judge in court. Judges were meant to explore their own assumptions and biases, and how their personal perspectives may influence their interactions with the judicial process. The program also discussed relevant research methodologies. This research-supported approach provided program participants with legal frameworks and analytical tools to examine “the underlying basis of legal rules and concepts to ensure that they correspond with social realities and conform to the constitutional guarantee of equality.”<sup>133</sup>

Since 2003, social context has been integrated as a key component in all NJI courses. Active learning is an essential component; for example, judges conduct mock settlement conferences.<sup>134</sup> The course also covers cultural differences among families of different backgrounds, including new immigrants who may not be fully integrated into Canadian parenting values and customs. Participants reflect on how these cultural differences may influence their judicial work and discuss the cultural and normative values that shape Canadian family law.<sup>135</sup> However, the program does not appear to emphasize the connection between these values and public health.

#### IV. *Salus Populi*: Building a JEP on the SDOH

*Salus Populi* was developed in response to the absence of JEPs focusing on the SDOH as such, or on public health-related research methodology. Beginning in

131. *Id.*

132. Suki Goodman & Joha Louw-Potgieter, *A Best Practice Model for the Design, Implementation and Evaluation of Social Context Training for Judicial Officers*, 5 AFRICAN J. OF LEGAL STUD. 181, 189 (2012), [https://brill.com/view/journals/ajls/5/2/article-p181\\_4.xml](https://brill.com/view/journals/ajls/5/2/article-p181_4.xml).

133. *The Social Context Education Project*, NAT’L JUD. INST., CAN. 1, <https://web-stage.law.columbia.edu/sites/default/files/microsites/clinics/sexuality-gender/files/SG13.pdf> (last visited Feb. 19, 2022).

134. *Advancing Judicial Education*, NAT’L JUD. INST. 12 (2018), <https://www.nji-inm.ca/index.cfm/judicial-education/in-review-2016-2018/?langSwitch=en>.

135. *Id.*

January 2020, with support from the Robert Wood Johnson Foundation, our interdisciplinary team researched and drafted four white papers to serve as the foundation of the project. These papers focused on: 1) How Judicial Decisions Affect Population Health; 2) The Public Health Legal Norm: Why Judges Should Understand the SDOH; 3) Judicial Education Programs: Surveying the Landscape; and 4) Possible Pathways for Developing a SDOH Judicial Education Program.<sup>136</sup>

We also conducted a survey of judges to learn about their preferences regarding both JEPs generally and a SDOH course specifically.<sup>137</sup> Forty-eight judges responded, expressing interest in learning more about poverty and mental health, and stating a preference for classes with an interactive format, with activities such as small-group discussions and mock case problems.<sup>138</sup>

We also convened and met with our advisory board, a group of thirteen judges, scholars, and JEP leaders.<sup>139</sup> The advisory board shared invaluable feedback about what it considers to be essential and effective components of JEPs. It also provided counsel on our curriculum as we developed it, emphasizing the importance of including a section on racism.

Beginning in January 2021, we conducted key informant interviews of JEP administrators to learn more about how they adapted their program administration in the face of the COVID-19 pandemic. During the pandemic, many JEP educators had to switch from in-person classes to a virtual platform or postpone their trainings. The interviewees found the switch to online generally well received by judges for matters of convenience. At the same time, some interviewees expressed concerns about the new virtual setting. Technological challenges and reduced opportunities for participation were listed as possible barriers to participant engagement.

With this information, we developed a set of learning objectives and the initial *Salus Populi* curriculum. The first pilot course was conducted in fall 2021.

#### *A. Curriculum Structure*

The *Salus Populi* curriculum is built to be interdisciplinary; it relies on public health experts to present key public health concepts, and public health law experts to guide participants in applying those concepts to case studies. The course is designed to be interactive and engaging, utilizing small class sizes and a mix of seminars and discussion. It is structured around five main learning objectives: 1) to increase judges' understanding of individual and population health; 2) to help judges recognize the SDOH and their impact on individual and population health; 3) to enable judges to understand a socioecological model of health; 4) to shift judges' focus from individual-level factors, such

136. *White Papers*, SALUS POPULI (2023), <https://www.saluspopulisdoh.com/program-materials>.

137. WHITE PAPER FOUR, *supra* note 109.

138. *Id.*

139. *Advisory Board*, SALUS POPULI, <https://www.saluspopulisdoh.com/advisory-board> (last visited Feb. 14, 2022).

as behavior, genetic predisposition, and individual exposure, to the SDOH at multiple levels of analysis; 5) to help judges become better consumers of relevant, evidence-based research on the SDOH and law.

The curriculum is divided into four units: 1) The Social Determinants of Health and Public Health 101; 2) Poverty; 3) Racism; 4) Housing and Employment. The program is structured with the idea of logical topic progression. The first unit introduces the SDOH and several frameworks used in public health. Following the introductory unit, participants learn about two “upstream” or “macro” SDOH: poverty and racism. The program concludes with a unit on two “meso” SDOH, housing and employment. These SDOH are considered meso, or midlevel, as they are oftentimes the result of macro SDOH such as poverty and racism; they can also affect SDOH further downstream, such as in access to quality health care.<sup>140</sup>

Each unit is two hours long and follows a basic structure that combines public health science and methodology with examination of a relevant case study drawn from an actual legal case. Small-group discussion is an integral component of each unit, especially for the case study portions.

Although the case studies compel participants to reflect upon legal issues, this course does not teach legal doctrine, nor does it purport to know what the “correct” decision would be when a given case is viewed through a SDOH lens. The course, instead, focuses on introducing public health concepts and then allowing participants to consider how those concepts might relate to judicial decision-making. The cases that are discussed are not well known and were selected because of their interesting fact patterns and room for judicial discretion, as our goal was for participants to grapple with the facts and relevant science instead of analyzing legal doctrine.

Unit 1 introduces participants to the concept of the SDOH and how they shape individual and population health. The unit opens with a personal injury case in which plaintiff claimed mold in her apartment caused her children to develop asthma.<sup>141</sup> After a brief small-group discussion on causation, participants are introduced to the socioecological model of understanding individual health, touching upon both the Bronfenbrenner model and constrained choice theory. Next, we discussed the population approach and the concept of shifting the population distribution of risk, as most famously explained by Geoffrey Rose.<sup>142</sup> Armed with this conceptualization of the SDOH and population health, the group turns back to the asthma case to discuss the facts in light of this information.

Unit 2 illustrates how poverty works as an upstream social determinant of health and, as described above, also contains several segments discussing relevant methodology, coined “Methods Minutes,” including one on the limitations of randomized controlled trials. To ground the information in case law, participants discuss the above-mentioned child removal case, *In re Brittany T.*, in which the

140. See Braveman & Gottlieb, *supra* note 17.

141. *Clark v. New York City Hous. Auth.*, 2019 WL 2746073 (N.Y. Sup.) (trial order).

142. Geoffrey Rose, *Sick Individuals and Sick Populations*, 30 INT’L J. OF EPIDEMIOLOGY 427 (2001).

Department of Social Services is attempting to remove a twelve-year-old from her parents because of the child's obesity.<sup>143</sup> Participants examine the concept of "willful" violation, and how poverty might affect one's ability to fulfill a particular court order. A second Methods Minute introduces natural and quasi experiments in the context of studies on rising obesity rates.

Unit 3 invites participants to analyze racism's impact on individual and population health and to understand systemic racism through several datasets. Participants review and discuss data regarding opportunity-sharing and punishment, including the impact of a criminal record on job callbacks for Black and white people, and racial disparities in housing appreciation. A third Methods Minute discusses survey-based available data, and participants read and discuss the methodology of an article on COVID-19 and racial/ethnic disparities. The unit concludes with an examination of a compassionate-release case during COVID-19 that raises questions of the disproportionate effect of COVID-19 on Black Americans.<sup>144</sup>

Unit 4 demonstrates how housing and employment operate as meso-level SDOH and examines the value and appropriate use of qualitative research. The unit includes two case studies arising from the COVID-19 pandemic: an eviction moratorium case<sup>145</sup> and a case in which former employees seek an injunction ordering a meat processing facility to take appropriate safety measures to prevent disease spread.<sup>146</sup> Participants consider and discuss what constitutes an appropriate way to advance a public purpose, as well as questions surrounding standing.

### *B. The Pilot Course*

The pilot *Salus Populi* course took place in fall 2021. Although we originally hoped to provide an in-person course and then planned a hybrid course with both in-person and online components, increased spread of the coronavirus necessitated a fully online course. We offered two scheduling options: Schedule A consisted of two days, with Units 1-3 on day one and Unit 4 on day two, and Schedule B consisted of four days each spaced two weeks apart, with one unit per day.

Fourteen judges participated in the pilot course, joining from Ohio, Massachusetts, California, New York, Virginia, and Connecticut. Reflecting the interdisciplinary nature of the course content, instructors included Ph.D.s, J.D.s, and M.D.s, experts in public health and public health law. Several of our team members from Northeastern University's School of Law and Bouvé College of Health Science served as instructors, in addition to guest speakers from CDC, Yale Law School, and Georgia State University.

143. *In re Brittany T.*, 835 N.Y.S.2d 829, 831 (N.Y. Fam. Ct. 2007).

144. *United States v. Harris*, 505 F. Supp. 3d 1152 (D. Kan. 2020).

145. *Baptiste v. Kennealy*, 490 F. Supp. 3d 353 (D. Mass. 2020).

146. *Alma v. Noah's Ark Processors*, 2021 WL 781287 (D. Neb. 2021).

Given judicial preferences for active learning and a variety of teaching methods, as discussed above, the pilot course consisted of a combination of minilectures, full-group discussions, and small-group discussions. There was a small-group discussion for each case study, and we relied on judges, former judges, and experienced educators to run the breakout rooms.

After each unit and at completion of the course, we sought feedback from participants about their experience. This feedback will help our team develop the next iteration of *Salus Populi*, as well as complementary courses.

Most judges expressed overall satisfaction with the course and were especially appreciative of the many opportunities for small-group discussion, finding the case studies helpful to marrying the public health science with the law. One judge noted the course showed the importance of bringing issues thought of as “outside” the courtroom into the courtroom. Another judge stated the course increased appreciation of preventive actions and upstream intervention in society.

A frustration expressed by several judges was that the types of public health studies discussed in the course that are relevant to the SDOH are often not introduced into the record and thus not available for their consideration. Several judges suggested we develop a complementary course for attorneys so that in the future more SDOH-related facts and arguments may be included into the record.

As we continue developing the curriculum, we will continue focusing on encouraging interaction and small-group discussions, which are especially necessary for online programs. We found the two-day schedule seemed more effective at continuing course momentum and facilitating relationships, both between participants and instructors and among participants themselves, and will likely design future curriculums as either one full day or two consecutive days. We hope to collaborate with existing JEPs to offer the full or partial course and will conduct more rigorous evaluation as more judges take the course.

We have since received funding to develop a complementary course for lawyers and will begin developing that curriculum this year.<sup>147</sup>

## V. Conclusion

JEPs offer an important way for judges to learn about different areas of study that affect their work. Judges shape the SDOH, and thus the health of individuals and populations, through a multitude of pathways, and they are sometimes explicitly called upon to make decisions on matters of public health. As the SDOH are integral to a complete understanding of public health, as well as many legal issues, it is crucial that judges have access to this information, and also learn how to evaluate relevant studies. It is clear there is a real gap in judicial education, as well as a desire among judges for a class such as this.

147. This grant to develop a complementary course for lawyers will be funded by the W.K. Kellogg Foundation. Many thanks to WKKF for its support of *Salus Populi*.