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Nicholas Freudenberg: A Selected Bibliography to Accompany a Conversation on Health and Law

Julie Graves Krishnaswami
CUNY School of Law

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**NICHOLAS FREUDENBERG: A SELECTED
BIBLIOGRAPHY TO ACCOMPANY A
CONVERSATION ON HEALTH AND LAW**

*Julie Graves Krishnaswami**

INTRODUCTION

City University of New York (“CUNY”) Distinguished Professor of Public Health, Nicholas Freudenberg’s research focuses on public health policy, community health intervention, the health prison populations, and corporate conduct impacting health.¹ Freudenberg studies social factors that impact public health. His publications and scholarship provide empirical research, case studies, and evidence based research which can be used by lawyers and policy advocates to support constitutional arguments about fundamental fairness, universal healthcare, corporate responsibility for practices and products that harm public health, and the protection of children from toxic substances and unhealthy food.

Freudenberg was invited to CUNY School of Law on November 7, 2008 to participate in conversations with the law school community about health and constitutional law,² the role of community-based health outcomes for Latino and Latina communities, and improving public health indicators. Professor Freudenberg further engaged with the law school community about the ways in which the legal academia can support public health projects as well as how public health research and initiatives may serve and compliment legal efforts.

In a conversation moderated by CUNY School of Law Distinguished Professor Ruthann Robson,³ Professor Nicolas

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¹ Professor Nicholas Freudenberg—Biography, <http://web.gc.cuny.edu/ClinicalDoctoral/ph-faculty-freudenberg.asp>.

² Janet Calvo & Nicholas Freudenberg, *A Conversation on Health and Law*, 12 N.Y. CITY L. REV. 63 (2009).

³ Professor Ruthann Robson—Biography, <http://www.law.cuny.edu/faculty-staff/Robson.html>.

Freudenberg and CUNY Professor Janet Calvo⁴ discussed health-care and constitutional law from a public health perspective.⁵ As Freudenberg noted, these perspectives include considerations of specific populations and the social conditions under which they live, including food and nutrition, housing conditions, air and ozone pollution, access to education, occupation conditions, and human-to-human connections, among other considerations.⁶ Drawing upon public health research and case studies helps to create and sustain a legal framework where public health is the overriding theme of the dialog. Such a framework serves lawyers, lawmakers, and policy advocates when they consider healthcare legislation, environmental regulations, and constitutional arguments to support fundamental fairness in public health to reduce disparities in healthcare.

When constructing legal doctrine and theories to determine which health practices are to be regulated by the government and how, facts and data on social behavior, existing conditions, and consequences—empirical questions—must be evaluated from the public health perspective.⁷ Empirical research, which members of the legal field often have little ability to undertake, can be accessed and used to demonstrate the effectiveness of community intervention programs as well as pinpointing the causes and health effects of existing policies.⁸ “Students of sociology, psychology, anthropology, economics, medicine, and many other fields all contribute em-

⁴ Professor Janet Calvo – Biography, <http://www.law.cuny.edu/faculty-staff/JCalvo.html>.

⁵ Janet Calvo & Nicholas Freudenberg, *A Conversation on Health and Law*, 12 N.Y. CITY L. REV. ____ (2009).

⁶ *Id.*

⁷ Carl E. Schneider & Lee E. Teitelbaum, *Life's Golden Tree: Empirical Scholarship and American Law*, 2006 UTAH L. REV. 53, 63 (2006).

⁸ See Deborah L. Rhode, *Social Research and Social Change: Meeting the Challenge of Gender Inequality and Sexual Abuse*, 30 HARV. J. L. & GENDER 11, 19, 21–4 (2007). Empirical research is useful to understand the many of dimensions of and aid in creating programs, laws, and social policies to remedy other prevalent social problems, such as domestic violence and work place sexual harassment, and the relationship between mental illness and violence. *Id.*; see also Charles W. Lidz, Steven Banks, Lorna Simon, Carol Schubert, & Edward P. Mulvey, *Violence and Mental Illness: A New Analytic Approach*, 31 LAW & HUM. BEHAV. 23, 24 (2007) (explaining how empirical research provides new insights into the links between mental illness and violent behavior).

According to Rhode, legal scholars face substantial “disincentives for empirical researching.” Deborah L. Rhode, *Social Research and Social Change: Meeting the Challenge of Gender Inequality and Sexual Abuse*, 30 HARV. J. L. & GENDER 11, 22 (2007). The obstacle include the inability to secure or access funding for the collection of data, a lack of time to gather data compounded by the institutional pressures to demonstrate scholarly productivity, methodical and technical complications, outcomes may not be justifiably fruitful, and the dearth of audience. *Id.* at 21–4; see also Schneider & Teitel-

pirical research which is crucial to legal scholarship. . . . The more they will collaborate with law professors on empirical projects, the better.”⁹ With the emergence of the empirical legal studies, empirical methods are becoming important within legal scholarship.¹⁰ Empirical research constitutes “any attempt to acquire data about social behavior the law seeks to regulate, the way legal institutions behave, and the effect of law on social behavior.”¹¹ Similarly, “evidence-based research” refers to the methods, findings and potential uses of research evaluating the effectiveness of healthcare interventions in populations.”¹²

Case studies are a social scientific research method of particular value to lawyers and public health advocates. Social scientists rely on case studies as a research method “to collect, present, and analyze data fairly” and to “understand complex social phenomena.”¹³ More specifically, “[t]he essence of a case study . . . is that it tries to illuminate a *decision* or set of decisions—why they were taken, how they were implemented, and with what result.”¹⁴ The case studies authored by Freudenberg shed particular light on public health practices and the consequences for communities. Data compiled by Freudenberg and other public health researchers is useful to support and challenge constitutional claims about fundamental fairness.

This bibliography provides a sampling of Nicholas Freudenberg’s public health scholarship to give members of the legal community a richer public health perspective to guide and support legal claims and legislative priorities. Part 1 provides Freudenberg’s publications on public health and healthy advocacy; Part 2 lists works focusing on urban health, namely in New York City, and includes several case studies; Part 3 provides

baum, *supra* note 7, at 71–2 (explaining why empirical research is disfavored among law professors and then debunking law professors’ criticisms).

⁹ Schneider & Teitelbaum, *supra* note 7, at 65.

¹⁰ The American Judicial Society, *The Empirical Turn in Legal Education*, 89 JUDICATURE 312 (2008). The Journal of Empirical Legal Studies and Judicature are sources for contemporary, vanguard empirical legal scholarship. Additionally, empirical legal scholarship is the topic of an upcoming symposium for law professors and attorneys hosted by the Center for the Study of the Legal Profession and the Georgetown Journal of Legal Ethics, available at http://firms.law.indiana.edu/events/GULC_Mar09.pdf.

¹¹ Schneider & Teitelbaum, *supra* note 7, at 61.

¹² David M. Fox & Lee Greenfield, *Helping Public Officials Use Research Evaluating Healthcare*, 14 J. L. & POL’Y 531, 531 (2006).

¹³ ROBERT K. YIN, *CASE STUDY RESEARCH DESIGN AND METHODS* 3–4 (Sage Publications 2009).

¹⁴ *Id.* at 17.

Freudenberg's publications on corporate responsibility for practices, conditions, and products that harm individuals and threaten public health; and Part 4 lists works on incarcerated populations.

Freudenberg's empirical research and case studies serve to bolster legal arguments with statistics and facts, demonstrating and personalizing constitutional notions of fundamental fairness.¹⁵ The publications listed below represent only a selection of the publications by Freudenberg relevant to constitutional adjudication and healthcare policy. Similarly, the list below offers only a sample of social science research and public health scholarship for legal advocates.¹⁶ The bibliography is intended to serve as a starting point into case studies, empirical research, and evidence-based research to demonstrate the potential of the same for constitutional-based, public health arguments.

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¹⁵ Justice Louis Brandeis's famous brief for the Defendant, to the United States Supreme Court in *Muller v. Oregon*, 208 U.S. 412 (1908), known as the "social science brief" or "Brandeis Brief" used social science data to argue in support of a statute prohibiting women from working for more than ten hours per day in factories. *See, e.g.*, Brief for Defendant in Error, *Muller v. Oregon*, 208 U.S. 412 (1908), reprinted in 16 *LANDMARK BRIEFS AND ARGUMENTS OF THE SUPREME COURT OF THE UNITED STATES CONSTITUTIONAL LAW* 63 (1975); Herbert Hovenkamp, *Social Science and Segregation Before Brown*, 1985 *DUKE L. J.* 624, 628 n.15 (1985); Marion E. Doro, *The Brandeis Brief*, 11 *VAND. L. REV.* 783, 789-99 (1958).

¹⁶ Recent scholarship demonstrating the collaboration of empirical research and legal scholarship include, J. Denise Disken, *Taking it to the Bank: Actualizing Healthcare Equality for San Francisco's Transgender City and County Employees*, 5 *HASTING RACE & POVERTY L. J.* 129 (2008); Jeffrey Fagan, Garth Davies & Jan Holland, *The Paradox of the Drug Elimination Program in New City Public Housing*, 13 *GEO. J. POV. L. & POL'Y* 415 (2006).

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