

JAMES J. FISHMAN

Married, Two Children

Haub School of Law, Pace University
78 North Broadway
White Plains, New York 10603
(914) 422-4222 (Office)
jfishman@law.pace.edu

PROFESSIONAL EXPERIENCE

Member of the New York Bar, Federal Bar (SDNY, EDNY, Court of Appeals, 2nd Cir.).
Professor of Law, Pace University School of Law Emeritus (August 2015-present)
Professor of Law, Pace University School of Law (August 1984-2015) (Tenured)
James D. Hopkins Professor (1997-1999),
Charles A. Frueauff Foundation Research Professor (1994-1995, 1995-1996)
Visiting Professor of Law, Brooklyn Law School, (1990-1991, 2008-2009)
Visiting Lecturer, Faculty of Laws, University College, London
(January-July 1986, January-June 2007).
Associate Professor of Law, Pace University School of Law
(September 1982-July 1984).
Associate Dean and Associate Professor of Law, Pace University School
of Law (September 1978-August 1982).
Executive Director, Volunteer Lawyers for the Arts
(September 1975-June 1978).
Assistant Director, Institute of Judicial Administration
(May 1974-September 1975).
Executive Director, The Council of New York Law Associates, renamed Lawyers'
Alliance for New York (September 1972-April 1974).
Instructor, New York University, Department of Politics (1971-1972, full-time) and
Metropolitan Studies (1972-1976) part-time.
Assistant to the Vice Chancellor for Student Affairs,
New York University (September 1970-June 1971).
Deputy Assistant Attorney General, Litigation Bureau, New York State Law Department
(November 1968-September 1969)

EDUCATION

Ph.D. New York University, 1979 (Politics).
J.D. New York University. 1968 (Doherty-Fulbright Exchange Fellow, University of
Concepcion, Chile, Summer 1967).
A.M. International Relations, University of Pennsylvania, 1965.
A.B. University of Pennsylvania (Honors), 1964 (Sphinx Senior Society,
Director, Connaissance Lecture series).

PUBLICATIONS

Books:

- with Bjorklund and Kurtz, New York Nonprofit Law and Practice (Newark: Lexis 3rd ed. 2015; & Annual Supplement)
- The Faithless Fiduciary and the Quest for Charitable Accountability: Charitable Scandal and Regulatory Reform 1200-2000 (Durham: Carolina Academic Press, 2007) [Reviewed 121 Harv. L. Rev.684 (2007); 43 Real Prop. Tr. & Est. L.J. 797 (2009)]
- with Schwarz and Mayer Cases and Materials on Nonprofit Organizations, (New York: Foundation Press, 5th ed. 2015) with separate statutory supplement and teachers manual; & Annual Supplement.)
- with Schwarz and Mayer Taxation of Nonprofit Organizations (New York: Foundation Press 4th ed. 2015; and Annual Supplement)
- The Transformation of Threadneedle Street - The Deregulation and Reregulation of Britain's Financial Services, (Durham: Carolina Academic Press, 1993). [Reviewed 48 Business Lawyer 1753-1759 (1993)]
- with Kalodner et al. Limits of Justice: Courts' Roles in Desegregation of Education Litigation, (Cambridge: Ballinger, 1978).
- with Kaufmann, ed. Practicing Law in New York City, (N.Y., Council of N.Y. Law Associates, 1974).

Articles:

- “The Private Foundation Rules at Fifty: How Did We get them and Do They Meet Current Needs?”, Forthcoming, Pittsburgh Tax Rev. 2020
- “How Big Is Too Big: Should Certain Educational Endowments' Net Investment Income Be Subject to Tax?” 28 Cornell J. of Law & Public Policy 159 (2019)
- “Rethinking Riley: Applying Intermediate Scrutiny and Commensurate Standards to Judicial Evaluation of Regulation of Charitable Solicitation”, 25 George Mason Law Review 471 (2018)
- “Who Can Regulate Fraudulent Charitable Solicitation”, 13 Pitt. Tax Rev. 1 (2015)
- “What Went Wrong: Prudent Management of Endowment Funds and Imprudent Endowment Investing Policies”, 40 J. College & University Law 199 (2014)
- “The Federalization of Nonprofit Regulation and Its Discontents”, 99 Kentucky Law Review 799 (2011)
- “Stealth Preemption: The IRS's Corporate Governance Initiative”, 29 Va. Tax Rev. 101 (2010)
- “A Survey of Private Corporate, Trust and Tax Law in the United States Relating To Nonprofit Organizations” in Comparative Corporate Governance of Non-Profit Organizations, Von Hippel ed. (Cambridge Univ. Press,) 2010

- “Wrong Way Corrigan and Recent Developments in Nonprofit Landscape: A Need for New Legal Approaches”, 76 Fordham Law Review 567 (2007)
- “Charitable Accountability and Reform in Nineteenth Century England: The Case of the Charity Commission”, 80 Chicago-Kent Law Review 101 (2005)
- “Charity Scandal as a Catalyst of Literary Imagination and Legal Change in Nineteenth Century England”, 2005 Michigan State Law Review 1 (2005)
- “Tenure: Endangered or Evolutionary Species”, 2005 Akron Law Review 101 (2005)
- “Joseph Baxendale”, 11 Texas Wesleyan Law Review 249 (2005)
- “Improving Charitable Accountability”, 62 Maryland Law Review 218 (2003)
- “Tenure and Its Discontents”, 21 Pace Law Review 159 (2000).
- “Checkpoints on the Conversion Highway: Some Trouble Spots in the Conversion of Nonprofit Health Care Organizations to For-profit Status, 23 J. Corporation Law, 702 (1998).
- “From Charity to Commerce: Nonprofit Healthcare Conversions,” 5 The Charity Law & Practice Rev. 21 (1997)
- “A Comparison of Enforcement of Securities Laws Violations in the U.K. and the U.S.,” 14 The Company Lawyer 163 (1993)
- “Enforcement of Securities Laws Violations in the United Kingdom”, 9 Int’l Tax & Bus. Lawyer (Boalt Hall) 131 (1991).
- With Lawrence Strauss, “Endless Journey: Integration and the Provision of Equal Educational Opportunity in Denver’s Public Schools,” 32 Howard L.J. 627 (1989) abridged and reprinted in Flicker, ed. Courts’ Roles in Education Litigation (Phila: Temple Univ. Press 1990).
- “Standards of Conduct for Directors of Nonprofit Corporations,” 7 Pace L. Rev. 389 (1986).
- “The Development of Nonprofit Corporation Law and An Agenda for Reform,” 34 Emory L. J. 617 (1985).
- “Educational Vouchers: An Idea Whose Time has Come and Gone?” 15 Urban Lawyer 1 (1983).
- “The Social and Occupational Mobility of Prosecutors: New York City” in McDonald ed. The Prosecutor (Beverly Hills: Sage, 1979).
- “The Emergence of Art Law” 26 Cleveland State Law Review 481 (1977). Reprinted in materials for a conference on “Emerging Issues in Art Law” sponsored by the Committee on Art Law of the Association of the Bar of the City of New York and Volunteer Lawyers for the Arts, January, 1979.
- With Susan Metzger, “Protecting America’s Cultural and Historical Patrimony,” 4 Syracuse Int’l. L. & Com. 57 (1976). Updated and abridged by Fishman and reprinted in III Art & The Law I (1977). Update excerpted and reprinted in Merryman and Elsen, Law Ethics and the Visual Arts: Cases and Materials (Matthew Bender 1979).

ACADEMIC PRESENTATIONS 2008-2020

Symposium University of Pittsburgh Law School: Fiftieth Anniversary of the Private Foundation Rules, November 2019 *The Private Foundation Rules at Fifty: How Did We get them and Do They Meet Current Needs?*

AALS Annual Meeting January 2019 *How Big is Too Big: Should Certain Higher Educational Endowments' Net Investment Income Be subject to Tax?*

Nonprofit Institute, New York City Bar Association April 2018 *How Big is Too Big: Should Certain Higher Educational Endowments' Net Investment Income Be subject to Tax?*

AALS Annual Meetings January 2017, 2019 *Transitions: Preparing for Life Beyond the Academy*

Wilson Center Pace University October 2016 *The Trump Foundation, The Clinton Foundation and the 2016 Election: What Does All This Mean for Philanthropy?*

Law and Society Association Annual Meeting May 2015 *Who Can Regulate Fraudulent Charitable Solicitation*

AALS Annual Meeting, January 2015 *Who Can Regulate Fraudulent Charitable Solicitation*, presented at a joint program of the Sections on Taxation and Nonprofit and Philanthropy Law

Law and Society Association Annual Meeting, June 2013 "What Went Wrong: Prudent Management of Endowment Funds and Imprudent Endowment Investing Policies"

Columbia Law School, February 2013 Charities Regulation and Oversight Project Policy Conference: The Future of State Charities Regulation and Enforcement-Presentation on "Strange Silence: Attorneys General Reaction to Improper Preemption of State Nonprofit Governance Standards."

AALS Annual Meeting 2011- Section on Nonprofit and Philanthropy Law Commentator on Papers Relating to "The Federalization of Nonprofit and Charity Law"

Law & Society Annual Meeting 2010- Presentation on Stealth Preemption: The IRS's Corporate Governance Initiative

AALS Annual Meeting 2009 – Section on Nonprofit and Philanthropy Law Chair
of Panel on Panel on New Research in Nonprofit Law

Law & Society Meeting 2008 – Presentation on “The Faithless Fiduciary and the
Elusive Quest for Nonprofit Accountability” in Author Meets Reader
discussion of book.

Columbia Law School, March 2008 Charities Law Conference-Panel on
GOVERNANCE ISSUES THAT MAY TRIGGER AG INVOLVEMENT-Presentation
on “Criteria to Consider for Attorney General Involvement.” Paper
became part of Conference Proceedings.

AALS Annual Meeting 2008 – Section on Nonprofit and Philanthropy Law:
Participant on Panel: “Roundtable on Nonprofit and Philanthropy Law
Scholarship”

CONTINUING LEGAL EDUCATION MATERIALS AND PRESENTATIONS:

“What Do We Mean by ‘Nonprofit’”, Introduction to Non-profit Organizations
Law, New York City Bar Association 2013, 2014, 2016- 2020

“The Charitable Deduction: Your Money or Uncle Sam’s?” Nonprofit Institute,
New York City Bar Association (2014)

“Do Neutrals Care About the Law, Securities Arbitration 2011, Practicing Law
Institute, 2011

“The IRS’s Corporate Governance Initiative: Recommendations For Medium And
Smaller Nonprofits”, Advising Nonprofit Organizations, Practicing Law
Institute, 2009

“Fiduciary Responsibilities: A Review of General Responsibilities” Profitable
Information for the Nonprofit, New York City Bar Association, 2003

“Fiduciary Responsibilities”. Hot Topics in Non-Profit Organizations: What
You Need to Know Now, Association of the Bar of the City of New York,
2002

“Director and officer Liability and Governance Problems and How to Avoid
Them”, Operating a Nonprofit Organization, Association of the Bar of the
City of New York, 2001

“Obtaining Tax Exempt Status From Taxing Authorities”, Forming and Advising
Non-Profit Organizations in New York State, Association of the Bar of
the City of New York (1999 & 1997 editions).

“Director and Officer Governance Problems and How to Avoid Them,” 26th Conference on Tax Planning for 501©(3) Organizations, (Matthew Bender 1998).

With Michael Cooney & Ronald Gross, “Operating the New York Not-for-Profit Organization: Governance Issues”, in New York State Bar Association, Forming and Advising the New York Not-For-Profit Organization (1993).

Ed. The Arts and the Law, materials prepared for a conference on “The Arts and the Law” sponsored by the Committee on Art Law of the Association of the Bar of the City of New York and Volunteer Lawyers for the Arts (December 1977).

Newspaper Columns, On Line Essays:

“For-profit Philanthropy: An Oxymoron”, *See Also*, Texas L. Rev. 2010 available at <http://www.texasrev.com/seealso>.

“Taking a Lesson from New York’s Billion-Dollar Blue Cross Heist,” *Chronicle of Philanthropy*, February 21, 2002, p. 38

“China Ventures: Caveat Investor,” The Asian Wall Street Journal, January 7, 1980, p. 10.

Occasional Columns in the New York Law Journal (1972-1978).

Book Reviews:

“Honorable Justice: The Life of Oliver Wendell Holmes” 10 Pace L. Rev. 625 (1990).

“Law, Ethics, and the Visual Arts and Art Law: Rights and Liabilities of Creators and Collectors,” 8 Pace L. Rev. 303 (1988).

“The Berne Convention for the protection of literary and artistic works: 1886-1986,” 18 J. Arts Management & L. 82 (1988).

“Educational Policy Making and the Courts”, 4 Pace L. Rev. 195 (1983).

“The Deskbook of Art Law and Law Ethics and the Visual Arts,” 10 Connecticut Law Review 742 (1978).

“Recent Books on African Law” Journal of Modern African Studies, December, 1971.

SUBJECTS

Advanced Contracts (Seminar)

Agency, Partnerships & Limited Liability Companies

Contracts

Corporations and Partnerships

Corporate Finance

International Finance

Law and the Visual Arts (Seminar)

Law and Education (Seminar)

Legal Method
Nonprofit Organizations
Remedies
Sales

PROFESSIONAL ORGANIZATIONS

American Bar Association, Member:
Committee on Federal Regulation of Securities, Subcommittee on International Securities Matters (1992-3)
Committee on Nonprofit Corporations, (1992-6)
New York City Bar Association, Member:
Committee on Corporations (2003-2004)
Committee on Nonprofit Organizations (1991-1994, 1996-1999, 2000-2003, 2005-2008, 2011-2014, 2016-2019)
Committee on the Library (1980-1983, 1994-1996);
Committee on the Second Century (1972-1978, 1987-1990);
Committee on Art Law (1977-1980, 1986-1989, 2008-2010);
Special Committee on Education and the Law
(Chair 1981-1984; member 1985-1987);
Joint Committee on the Legal Referral Service
(1978-1981);
Committee on Philanthropic Organizations (1978-1979);
Committee on Civil Rights (1973-1976);
Special Committee on Demonstration Observation (1972-1973).
National Association of Securities Dealers Neutrals Panel (renamed Financial Industry Regulatory Association)

MISCELLANEOUS

American Bar Association Business Law Section Nonprofit Organizations Committee's Outstanding Academic Award for "distinguished academic achievement contributing to the nonprofit sector through scholarly work." (2010)
Speaker, "Foundation Governance" UBS Philanthropy Forum, Cancun Mexico (2010)
Board of Directors, New York Common Pantry (2018-Present)
Trustee, Peter B. Carter Trust (2017-Present)
Board of Directors, Lotos Foundation (2016-Present) Secretary
Board of Directors, Trollope Society U.S.A. (2016-present)
Board of Directors, New York Common Pantry (2018-present)
Board of Directors, Cornwall Foundation (2005-2012) Vice-President
Board of Directors, Opus 118, the Harlem School of Music (2005-2011)
Board of Directors, Youth Advocacy Center (2003-2008)
Board of Directors, New York Common Pantry (2017-Present)
Fulbright Senior Specialist Panel (2001-2005)

Adjunct Professor, Brooklyn Law School (1991-1993)
Consultant Editor, International Corporate Law Bulletin (1998-2000)
Participant, Speakers in the Humanities Program, New York State Council for the Humanities (1990-1991).
Member, Board of Advisors, N.Y.U. Program on Law & Philanthropy (1993-1996)
Member, New York University Alumni Council (1993-1994)
Member, Nonprofit Forum (1995-present)
Counsel, Drama Desk, Inc. (1987-1993).
Co-author, Special Committee on Education and the Law “Due Process in Decisions Relating to Tenure in Higher Education”.
Advisor to Attorney General of the State of New York on legislation affecting The Arts (1979-1981).
Board of Directors, Merry Enterprises Theatre, Inc. -off-Broadway theater company (1980-1982).
Member, Association of the Bar of the City of New York - Council of New York Law Associates Delegation to the People’s Republic of China (Fall 1979).
Consultant, Institute of Judicial Administration (1973, 1976-1989).
Consultant, Staff Development Task Force, Council of Chief State School Officers (1975-1976).
Board of Directors, Bronx Legal Services Corporation B (1973-1974).
Volunteer Attorney, East Harlem Community Law Office (1971-1976).
Junior Fellow, Center for International Studies, New York University (1969-1971).