

# **STEPHEN B. BURBANK**

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## **EMPLOYMENT**

1995-	David Berger Professor for the Administration of Justice, University of Pennsylvania
2016	Visiting Professor of Law, UC Berkeley (Spring)
2012	Herbert Smith Visitor to the Faculty of Law and Senior Academic Visitor to Clare College, University of Cambridge (March)
2009	Visiting Professor of Law, University of Navarra (Spain) (May)
2007	Visiting Professor of Law, Harvard University (Spring)
2005	John H. Watson, Jr. Visiting Professor of Law, Harvard University (Fall)
2004	Visiting Professor of Law, Harvard University (Fall)
2002	Visiting Professor of Law, University of Urbino, Italy (May) and Harvard University (Fall)
1999-2000	Visiting Professor of Law, Harvard University (Fall and Winter) and University of Pavia, Italy (March-April)
1997	Visiting Professor of Law, Goethe University, Frankfurt, Germany (October - December)
1995	Acting Dean, University of Pennsylvania Law School (July 1 - December 31)

1991-1995	Robert G. Fuller, Jr., Professor of Law, University of Pennsylvania
1986-1991	Professor of Law, University of Pennsylvania
1985-1986	Visiting Associate Professor of Law, University of Michigan
1983-1985	Associate Professor of Law and Associate Dean, University of Pennsylvania
1980-1983	Assistant Professor of Law, University of Pennsylvania
1979-1980	General Counsel and Assistant Professor of Law, University of Pennsylvania
1975-1979	General Counsel, University of Pennsylvania
1974-1975	Law Clerk to the Chief Justice of the United States
1973-1974	Law Clerk to Justice Robert Braucher, Supreme Judicial Court of Massachusetts

## **EDUCATION**

Harvard Law School, Cambridge, MA, 1969-1970, 1971-1973, J.D. *Magna Cum Laude* (1970-1971 spent in Europe on Sheldon Fellowship). Honors: Newbold Rhineland Landon Memorial Fellowship; Harvard Law Review (resigned 9/71); Joseph H. Beale Prize (Conflict of Laws); Fay Diploma (First in Class).

Harvard College, Cambridge, MA, 1964-1968, A.B. *Summa Cum Laude* in Classics (Specializing in Latin and Roman History). Thesis: *Roman Politics in the 70s B.C.* Honors: Harvard College Honorary Scholarship; John Harvard Scholarship; Detur Prize; Phi Beta Kappa (Second Marshal); Curtis Prize; Latin Commencement Orator; Sheldon Fellowship.

Phillips Academy, Andover, MA, 1961-1964. Honors: *Cum Laude*; Van Dusen Prize (Harvard-Andover); Faculty Prize (First in Class).

## **UNIVERSITY RESPONSIBILITIES (SELECTED)**

### Law School:

Courses and Seminars: Civil Procedure; Conflict of Laws; Evidence; Complex Litigation; International Civil Litigation in U.S. Courts; The Empirical Study of Procedure and

Evidence (Seminar); Complex Litigation & Dispute Resolution (Seminar)  
The Study of Judicial Behavior (Seminar); Advanced Topics in Procedure and Litigation  
(Seminar); Litigation Finance (Seminar).

Committees: Appointments; Library; Admissions; Placement; Tenure and Promotion;  
Educational Program; Clerkship; Building, Budget & Planning; International Programs.

Adviserships and Directorships: Legal Studies Seminar; Law Review; David Berger  
Program on Complex Litigation; Salzburg Seminar Fellows; Levy Fellows.

Other: Dean Search Committee; Associate Dean; Ombudsman; Acting Dean.

University:

Counselor to the President; Provost Search Committee; Chair, Search Committee for the  
Meyerson Chair in Urbanism; Chair, Committee to Review the Charter of the University Student  
Judicial System; Chair, Faculty Editorial Board, University of Pennsylvania Press; Faculty  
Senate Executive Committee; Senate Committee on the Faculty; Senate Nominations  
Committee; Consultative Committee for the Selection of a President; Commission on  
Strengthening the Community; Law School Dean Review Committee; Conflict of Interest  
Standing Committee.

**PUBLICATIONS**

Books

Rights and Retrenchment: The Counterrevolution Against Federal Litigation (Cambridge  
University Press 2017) (with Sean Farhang).

Judicial Independence at the Crossroads: An Interdisciplinary Approach (co-editor with  
Barry Friedman) (Sage Publications 2002).

Report of the National Commission on Judicial Discipline & Removal (1993) (with  
others).

Rule 11 in Transition: The Report of the Third Circuit Task Force on Federal Rule of  
Civil Procedure 11 (American Judicature Society 1989) (principal author).

Book Chapters

“Jurisdictional Equilibration, the Proposed Hague Convention and Progress in National  
Law”, in A Global Law of Jurisdiction and Judgments: Lessons from The Hague 117-57  
(J. Barcelo & K. Clermont, eds. 2002).

“Reason, Rigor and Regret,” in Law and Justice in a Multistate World: Essays in Honor

of Arthur T. von Mehren 33-53 (J. Nafziger & S. Symeonides, eds. 2002).

“Introduction,” (with B. Friedman & D. Goldberg), in Judicial Independence at the Crossroads: An Interdisciplinary Approach 3-8 (S. Burbank & B. Friedman, eds. 2002).

“Reconsidering Judicial Independence,” (with B. Friedman), in Judicial Independence at the Crossroads: An Interdisciplinary Approach 9-42 (S. Burbank & B. Friedman, eds. 2002).

“An Interdisciplinary Perspective on the Tenure of Supreme Court Justices,” in Reforming the Supreme Court 317-42 (P. Carrington & R. Cramton, eds. 2005).

“On the Study of Judicial Behaviors: Of Law, Politics, Science and Humility,” in What’s Law Got to Do With It? What Judges Do, Why They Do It, and What’s at Stake 41-68 (C. Geyh, ed. 2011).

“Private Enforcement of Statutory and Administrative Law in the United States (and Other Common Law Countries),” in Procedural Justice 197-318 (P. Gottwald & B. Hess, eds. 2014) (with S. Farhang & H. Kritzer).

“Procedure and Pragmatism (Proceso y Pragmatismo),” in Debatiendo con Taruffo 255 (J. Ferrer & C. Vasquez, eds. 2016).

“Reforming Civil Rights Litigation: Why the Court Succeeded Where Congress Failed,” in The Rights Revolution Revisited 197-223 (L. Dodd, ed. 2018) (with S. Farhang).

## Articles

"The Rules Enabling Act of 1934," 130 U. PA. L. REV. 1015 (1982).

"Procedural Rulemaking Under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980," 131 U. PA. L. REV. 283 (1982).

"Sanctions in the Proposed Amendments to the Federal Rules of Civil Procedure: Some Questions About Power," 11 HOFSTRA L. REV. 997 (1983).

"The Federal Judicial Discipline Act: Is Decentralized Self-Regulation Working?," 67 JUDICATURE 183 (1983).

"Collins Seitz: A Noble Career," 132 U. PA. L. REV. 1281 (1984) (tribute).

"Interjurisdictional Preclusion and Federal Common Law: Toward a General Approach," 70 CORNELL L. REV. 625 (1985).

"Afterwords: A Response to Professor Hazard and a Comment on *Marrese*," 70 CORNELL L. REV. 659 (1985).

"Proposals to Amend Rule 68 -- Time to Abandon Ship," 19 U. MICH. J.L. REF. 425 (1986).

"Interjurisdictional Preclusion, Full Faith and Credit, and Federal Common Law: A General Approach," 71 CORNELL L. REV. 733 (1986).

"Politics and Progress in Implementing the Federal Judicial Discipline Act," 71 JUDICATURE 13 (1987).

"The Costs of Complexity," 85 MICH. L. REV. 1463 (1987).

"Alternative Career Resolution: An Essay on the Removal of Federal Judges," 76 KENTUCKY L.J. 643 (1987-88).

"The Chancellor's Boot," 54 BROOKLYN L. REV. 31 (1988).

"Of Rules and Discretion: The Supreme Court, Federal Rules and Common Law," 63 NOTRE DAME L. REV. 693 (1988).

"Plus Ça Change ...," 21 U. MICH. J.L. REF. 509 (1988).

"The Transformation of American Civil Procedure: The Example of Rule 11," 137 U. PA. L. REV. 1925 (1989).

"The Report of the Third Circuit Task Force on Federal Rule of Civil Procedure 11: An Update," 19 SETON HALL L. REV. 511 (1989).

"Hold the Corks: A Comment on Paul Carrington's 'Substance' and 'Procedure' in the Rules Enabling Act," 1989 DUKE L.J. 1012.

"*Sic Transit Gloria Mundheim*," 138 U. PA. L. REV. 5 (1989) (tribute).

"For Leo Levin: *Ave atque Ave*," 138 U. PA. L. REV. 321 (1989) (tribute).

"Is it Time for a National Commission on Judicial Independence and Accountability?," 73 JUDICATURE 176 (1990).

"Congress Accepts Supreme Court's Invitation to Codify Supplemental Jurisdiction," 74 JUDICATURE 213 (1991) (with Mengler & Rowe).

"The World in Our Courts," 89 MICH. L. REV. 1456 (1991).

"Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer," 40 EMORY L.J. 943 (1991) (with Mengler & Rowe).

"A Coda on Supplemental Jurisdiction," 40 EMORY L.J. 993 (1991) (with

Mengler & Rowe).

"Federal Judgments Law: Sources of Authority and Sources of Rules," 70 TEX. L. REV. 1551 (1992).

State Ethical Codes in Federal Practice: Emerging Conflicts," 19 FORDHAM URBAN L.J. 969 (1992).

"Foreword: The Law of Federal Judicial Discipline and the Lessons of Social Science," 142 U. PA. L. REV. 1 (1993) (with S. Jay Plager).

"Ignorance and Procedural Law Reform: A Call for a Moratorium," 59 BROOKLYN L. REV. 841 (1993).

"The Reluctant Partner: Making Procedural Law for International Civil Litigation," 57 L. & CONTEMP. PROB. 101 (1994).

"Three Opinions," 29 NEW ENGLAND L. REV. 517 (1995).

"The Good, the Bad, and the Ugly" (review of Jonathan Harr, A Civil Action), 79 JUDICATURE 318 (1996).

"The Past and Present of Judicial Independence," 80 JUDICATURE 117 (1996).

"Where's the Beef?: The Interjurisdictional Effects of New Jersey's Entire Controversy Doctrine," 28 RUTGERS L. REV. 87 (1996).

"Procedure and Power," 46 J. LEGAL ED. 513 (1996).

"Unwarranted Distrust of Federal Judges," 81 JUDICATURE 7 (1997).

"The Courtroom as Classroom: Independence, Imagination and Ideology in the Work of Jack Weinstein," 97 COLUMBIA L. REV. 1971 (1997).

"Implementing Procedural Change: Who, How, Why, and When?," 49 ALA. L. REV. 221 (1997).

"Civil Procedure Reform in Comparative Context: The United States of America," 45 AM. J. COMP. L. 673 (1997) (with L. Silberman).

"The United States' Approach to International Civil Litigation: Recent Developments in Forum Selection," 19 U. PA. J. INT'L ECON. L. 1 (1998).

"The Architecture of Judicial Independence," 72 S. CAL. L. REV. 315 (1999).

"Jurisdiction to Adjudicate: End of the Century or Beginning of the Millennium?" 7 TULANE J. INT'L & COMP. L. 111 (1999).

Review of Michael Gerhardt, "The Federal Impeachment Process: A Constitutional and Historical Analysis," 562 THE ANNALS 225 (1999).

"The Class Action in American Securities Regulation," ZZPInt (Zeitschrift fuer Zivilprozessrecht-International) (No. 4) 321 (1999).

"The Bitter with the Sweet: Tradition, History and Limitations on Federal Judicial Power - A Case Study," 75 NOTRE DAME L. REV. 1291 (2000).

"Foreword: Mass Torts: Causes and Limits of Pessimism," 148 U. PA. L. REV. 1851 (2000).

"Jurisdictional Equilibration, the Proposed Hague Convention and Progress in National Law," 49 AM. J. COMP. L. 203 (2001).

"Foreword: Making Progress the Old-Fashioned Way," 149 U. PA. L. REV. 1231 (2001).

"*Semtek*, Forum Shopping and Federal Common Law," 77 NOTRE DAME L. REV. 1027 (2002).

"Politics, Privilege and Power: The Senate's Role in the Appointment of Judges to the Federal District Courts and Courts of Appeals," 86 JUDICATURE 24 (2002)).

"Procedure, Politics and Power," 52 J. LEGAL ED. 342 (2002).

"The Roles of Litigation," 80 WASH. U. L.Q. 705 (2002).

"What Do We Mean by 'Judicial Independence'?" 64 OHIO STATE L.J. 323 (2003).

Review of Mark Kozlowski, "The Myth of the Imperial Judiciary: Why the Right is Wrong about the Courts," 14 LAW & POLITICS BOOK REVIEW NO. 2 (Feb. 2004).

"Jurisdictional Conflict and Jurisdictional Equilibration: Paths to a *Via Media*?", 26 HOUSTON J. INT'L L. 385 (2004).

"Keeping Our Ambition Under Control: The Limits of Data and Inference in Searching for the Causes and Consequences of Vanishing Trials in Federal Court," 1 JOURNAL OF EMPIRICAL LEGAL STUDIES 571 (2004).

"Vanishing Trials and Summary Judgment in Federal Civil Cases: Drifting Towards Bethlehem or Gomorrah?," 1 JOURNAL OF EMPIRICAL

LEGAL STUDIES 591 (2004).

“Procedure, Politics and Power: the Role of Congress,” 79 NOTRE DAME L. REV. 1677 (2004).

“All the World His Stage” (book review), 52 AM. J. COMPL. 741 (2004).

“The Politics of the Federal Judiciary: Tiered Appellate Decisionmaking,” 89 JUDICATURE 20 (2005).

“Judicial Accountability to the Past, Present and Future: Precedent, Politics and Power,” 28 U. ARK. LITTLE ROCK L. REV. 19 (2005).

“Alternative Career Resolution II: Changing the Tenure of Supreme Court Justices,” 154 U. PA. L. REV. 1511 (2006).

“Federalism and Private International Law: Implementing the Hague Choice of Court Convention in the United States,” 2 J. PRIV. INT’L L. 287 (2006).

“Edward R. Becker: A Man in Full,” 155 U. PA. L. REV. 1 (2006).

“Aggregation on the Couch: The Strategic Uses of Ambiguity and Hypocrisy,” 106 COLUM. L. REV. 1924 (2006).

“Judicial Independence, Judicial Accountability and Interbranch Relations,” 95 GEORGETOWN L.J. 909 (2007).

Reprinted in Judicial Activism: Need for Reforms (A. Kumari, ed. 2007).

Reprinted as revised in *Daedalus*, Fall 2008, at 16.

“The Complexity of Modern American Civil Litigation: Curse or Cure?” 91 JUDICATURE 163 (2008).

Translated in Elementi Per Una Definizione di Complessita Processuale (A. Dondi, ed. 2011)

“The Class Action Fairness Act of 2005 in Historical Context: A Preliminary View,” 156 U. PA. L. REV. 1439 (2008).

“Pleading and the Dilemmas of ‘General Rules,’” 2009 WIS. L. REV. 535.

“Pleading and the Dilemmas of Modern American Procedure,” 93 JUDICATURE 109 (2009).

“Time Out,” 158 U. PA. L. REV. PENNUMBRA 148 (2009) (on-line).

“Straws, Sand, and Sophistry,” 158 U. PA. L. REV. PENNUMBRA 160 (2009) (on-line).

“Not Since Thomas Jefferson Dined Alone: For Geoff Hazard at 80,” 158 U. PA. L. REV. 1283 (2010).

“Summary Judgment, Pleading, and the Future of Transsubstantive Procedure,” 43 AKRON L. REV. 1189 (2010).

“Redeeming the Missed Opportunities of *Shady Grove*,” 159 U. PA. L. REV. 17 (2010) (with T. Wolff).

“Litigation and Democracy: Restoring A Realistic Prospect of Trial,” 46 HARV. CIV. R.-CIV. LIB. L. REV. 399 (2011) (with S. Subrin).

“Private Enforcement of Statutory and Administrative Law in the United States,” INT’L LIS 153 (2011) (Italy).

“International Civil Litigation in U.S. Courts: Becoming a Paper Tiger?,” 33 U. PA. J. INT’L L. 663 (2012).

“A Tea Party at The Hague?,” 41 SW. L. REV. 629 (2012).

“Leaving the Bench, 1970-2009: The Choices Federal Judges Make, What Influences those Choices, and their Consequences, 161 U. PA. L. REV. 1 (2012) (with S.J. Plager & G. Ablavsky).

“Thinking, Big and Small,” 46 U. MICH. J.L. REF. 527 (2013).

“Private Enforcement,” 17 LEWIS & CLARK L. REV. 637 (2013) (with S. Farhang & H. Kritzer).

“Whose Regulatory Interests?: Outsourcing the Treaty Function,” 45 N.Y.U. J. INTL L. & POL’Y 1037 (2013).

“Litigation Reform: An Institutional Approach,” 162 U. PA. L. REV. 1543 (2014) (with S. Farhang).

“Federal Court Rulemaking and Litigation Reform: An Institutional Approach,” 15 NEV. L.J. 1559 (2015) (with S. Farhang).

“Proportionality and the Benefits of Discovery: Out of Sight, Out of Mind?,” 35 REV. LIT. 647 (2016).

“The Subterranean Counterrevolution: The Supreme Court, the Media, and

Litigation Reform,” 65 DEPAUL L. REV. 293 (2016) (with S. Farhang).

“Class Actions and the Counterrevolution Against Federal Litigation,” 165 U. PA. L. REV. 1495 (2017) (with S. Farhang).

“Class Actions, Statutes of Limitations and Repose, and Federal Common Law,” 167 U. PA. L. REV. \_\_\_\_ (2018) (with T. Wolff).

“Rights and Retrenchment in the Trump Era,” 87 FORDHAM L. REV. \_\_\_\_ (2018) (with S. Farhang).

## **INVITED CONGRESSIONAL TESTIMONY**

Hearing on H.R. 2633 and H.R. 3550 Before the Subcomm. on Courts, Civil Liberties and the Admin. of Justice of the House Comm. on the Judiciary, 99th Cong., 1st Sess. 2-45, 90-93 (1985) (Rules Enabling Act).

Oversight Hearing on Federal Judicial Branch Before the Subcomm. on Courts, Civil Liberties, and the Admin. of Justice of the House Comm. on the Judiciary, 99th Cong., 1st Sess. 21-45 (1985) (Judicial Discipline).

Hearing on S.J. Res. 364 and S.J. Res. 370 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 99th Cong., 2d. Sess. 25-46 (1986) (Judicial Discipline).

Hearing on the Rules Enabling Act Before the Subcomm. on Courts and Admin. Practice of the Senate Comm. on the Judiciary, 100th Cong., 2d Sess. 33-44, 67-68 (1988) (Rules Enabling Act).

Hearings on H.R. 1620, H.R. 1930 and H.R. 2181 Before the Subcomm. on Courts, Intellectual Property and the Admin. of Justice of the House Comm. on the Judiciary, 101st Cong., 1st Sess. 228-47 (1989) (Judicial Discipline).

Hearing on H.R. 1252, The Judicial Reform Act of 1997 Before the Subcomm. on Courts and Intellectual Property of the House Comm. on the Judiciary, 105th Cong., 1st Sess. 54-60 (1997) (Judicial Administration).

Hearing on “Whether the Supreme Court has Limited Americans’ Access to Court” Before the Senate Comm. on the Judiciary, 111<sup>th</sup> Cong. (2009) (Pleading).

## **PROFESSIONAL ACTIVITIES AND MEMBERSHIPS (SELECTED)**

American Bar Association, Standing Committee on Federal Judicial Improvements (2012-13); Academic Adviser (2013-15).

National Commission on Judicial Discipline and Removal (1991-93) (appointed by

Speaker of U.S. House of Representatives).

Member, Board of Directors, American Judicature Society (1993-2005); Executive Committee (1996-2002); Vice-President (1997-1999); Co-Chair, Center for Judicial Independence Task Force (1999-2002); Chair, Judicial Independence and Accountability Task Force (2003-05); National Advisory Council (2005-2014); Amicus Committee (2000-2014); Chair, Editorial Committee (2000-2008).

Member, Board of Directors, American Academy of Political and Social Science (2001-2007); Chair (2004- 2007).

Committee to Review the Local Rules of Civil Procedure of the U.S. District Court for the Virgin Islands (2006-2008).

Salzburg Seminar, Special Session on the Personal Responsibility of Judges (Chair of Working Group) (1999).

Life Member, American Law Institute (elected 1977).

Members Consultative Groups, ALI Project on Complex Litigation, Restatement of the Law Governing Lawyer, and Aggregate Litigation Project.

United States Adviser, ALI Project on Transnational Rules of Civil Procedure.

Adviser, ALI International Jurisdiction and Judgments Project.

Adviser, ALI Restatement (3d) of Conflict of Laws.

International Association of Procedural Law.

Andrew W. Mellon Foundation/Aspen Institute for Humanistic Studies Fellowship for 1978-79. Member of an advisory committee to the Institute's Program on Justice, Society and the Individual.

Co-Moderator of Aspen Institute Seminar on the Corporation in Contemporary Society, 1989.

Co-reporter (with D. Segal) of the rules of the Judicial Council of the Third Circuit implementing the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (1981-1982). Reporter of amendments, 1984. Consultant on amendments, 1987.

Reporter, Third Circuit Task Force on Rule 11 (1987-1989).

Moderator and/or Panelist, 1983, 1988, 1991, 1993, 1997, 2000, 2001, 2002, 2003, 2006, 2007, 2008, 2010, 2014 Third Circuit Judicial Conferences.

Consultant to the Federal Courts Study Committee (1989).

Advisory Committee to the U.S. Bicentennial Commission on the Bill of Rights (1988-1990).

### **PRACTICE/ADR ACTIVITIES (SELECTED)**

System Arbitrator, National Football League (2011- ).

Special Master, National Football League (2002-2011).

Special Master in MDL 875 (E.D. Pa.) (1991-93) (settlement master).

Special Master in Georgine v. Amchem Products, No. 93-CV-0215 (E.D. Pa.) (1992-93) (analyzed historical settlement data).

Special Master in Meloro v. Conrail, No 95-1041 (E.D. Pa.) (judgment entered on report).

American Arbitration Association, Panel of Arbitrators.

Center for Public Resources, Regional Panel of Distinguished Neutrals.

\*Conducted more than 25 mediations under the Wellington Agreement; one mediation/arbitration; two interim arbitrations.

\*Non-Wellington ADR practice has included a minitrial and more than ten arbitrations.

Consultant to the U.S. Trade Representative (1989-1991).

Consultant to Dechert LLP (1986- ).

Center for Public Resources Commission on Arbitration (1998-2000).

Member of the Bars of Massachusetts, Pennsylvania, and the Supreme Court of the United States.

### **OTHER MEMBERSHIPS AND ACTIVITIES (SELECTED)**

Trustee, American Academy in Berlin (2007- ); Co-Secretary (2012- ); Chair, Governance Committee (2012-17);

Selection Committee, Berlin Prize Fellowships, American Academy in Berlin (2003-2007), Chair (2005-2007);

Non-Executive Director, Filtronic plc (1994-2008);

Charter Trustee of Phillips Academy (Andover) (1980-97);

Advisory Board, Institute of Contemporary Art, University  
of Pennsylvania (1981-1992, 1993-99);

Chair, Art Committee, Addison Gallery of American Art (1982-1986);

Chair, Steering Committee of 1968 Harvard Class Campaign (1979-1985);

Overseers' Committee to Visit Harvard and Radcliffe Colleges (1979-1985);

Supreme Court Historical Society;

Legal Club;

Century Association.

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