

David T. Hardy
Curriculum Vitae

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Education

J.D., University of Arizona 1975, with honors. Associate editor, Arizona Law Review, 1st place moot court 1st & 2nd years, won Regionals 3rd year.

B.A., University of Arizona 1972, with high honors & Honors Program (today the Honors College), in 3 years.

Experience

10 years' governmental service, Interior Department, Washington D.C.; 33 years in private practice. Experience ranged from Endangered Species and Administrative Procedure Acts to a death penalty reversal in the Arizona Supreme Court and a 5-4 in the US Supreme Court. (details below).

26 law review articles authored, two cited by the U.S. Supreme Court, and one by eleven U.S. Circuit Courts of Appeals, and another by Larry Tribe's AMERICAN CONSTITUTIONAL LAW. Author of five books, one a NY Times best-seller.

Publications

Legal Periodicals

Standards of Review, the Second Amendment, and Doctrinal Chaos, 42 S. ILL. L. J. 91 (2018).

Criminology, Gun Control, and the Right to Arms, 58 HOWARD L. J. 679 (2015).

The Right to Arms and Standards of Review: A Tale of Three Circuits, 46 CONN. L. REV. 1435 (2014).

Dred Scott v. John San(d)ford: The Case for Collusion, 41 N. KY L. REV. 37 (2014).

McDonald v. Chicago, *Fourteenth Amendment Incorporation and Judicial Role Reversals*, 8 N.Y.U. J. OF L. & LIBERTY 15 (2013).

The Rise and Demise of the “Collective Right” Interpretation of the Second Amendment, 59 CLEVELAND ST. L. REV. 315 (2011).

Originalism, Its Tools, and Some Caveats, 2 AKRON L. REV. STRICT SCRUTINY 1 (2010).

Ducking the Bullet: District of Columbia v. Heller and the Stevens Dissent, 2010 CARDOZO L. REV. DE NOVO 101 (2010).

Original Popular Understanding of the 14th Amendment as Reflected in the Print Media of 1866-68, 30 WHITTIER L. REV. 695 (2009). Cited by the Supreme Court in *McDonald v. City of Chicago*, by the plurality, and by Justice Thomas’ concurrence, 561 U.S. 742, 763, n. 10, 841 (2010).

The Lecture Notes of St. George Tucker: A Framing Era View of the Bill of Rights, 103 NORTHWESTERN U. L. REV. 1527 (2009).

Standing to Sue in the Absence of Prosecution: Can a Case Be Too Controversial for “Case or Controversy”?, 29 THOMAS JEFFERSON L. REV. 53 (2008).

A Well-Regulated Militia, 15 WM. & MARY BILL OF RIGHTS JOURNAL 1237 (2007), cited in *Binderup v. Attorney General*, 836 F.3d 336, 371 n. 17 (3rd Cir. 2016).

The Firearm Owners' Protection Act, 17 CUMB. L. REV. 585 (1987). Cited in a Supreme Court dissent and by eleven U.S. Circuit Courts of Appeals:

- *Staples v. United States*, 511 U.S. 610, 626 n.4 (1994) (Stevens, J., dissenting);
- *U. S. v. Andrade*, 135 F.3d 104, 109 n. 3 (1st Cir. 1998);
- *Torraco v. Port Authority*, 615 F.3d 129, 143 (2d Cir. 2010);
- *Ass’n of N.J. Rifle and Pistol Clubs v. Port Authority*, 730 F.3d 252, 256-57 (3rd Cir. 2013);
- *U.S. v. Hayden*, 64 F.3d 126, 129 (3d Cir. 1995);
- *U.S. v. Langley*, 62 F.3d 602 (4th Cir. 1995) (*en banc*);
- *United States v. Golding*, 332 F.3d 838 (5th Cir. 2003);
- *U.S. v. Kirk*, 70 F.3d 791, 798 n.1 (5th Cir. 1995), *en banc*, 105 F.3d 997, 1006-07 (1997);
- *U.S. v. McGill*, 74 F.3d 64, 67 (5th Cir. 1996);
- *U.S. v. Knutson*, 113 F.3d 27, 30 (5th Cir. 1997);
- *U.S. v. Rodriguez*, 132 F.3d 208,211 (5th Cir. 1997);
- *U.S. v. Golding*, 332 F.3 838, 841 N. 12 (5th Cir. 2003);
- *U. S. v. Cassidy*, 899 F.3d 543, 546 n.8 (6th Cir. 1990);
- *U.S. v. Choice*, 201 F.3d 837, 841 n. 5 (6th Cir. 2000);

- *U.S. v. Kenney*, 91 F.3d 884, 886 (7th Cir. 1996);
- *U.S. v. Farrell*, 69 F.3d 891, 893 (8th Cir. 1995);
- *U.S. v. Sherbondy*, 865 F.2d 996, 1002 (9th Cir. 1988);
- *U.S. v. Marchant*, 55 F.3d 509, 514 (10th Cir. 1995);
- *U.S. v. Wilkes*, 58 F.3d 1518, 1519 (10th Cir. 1995);
- *U.S. v. Haney*, 264 F.3d 1161, 1169 (10th Cir. 2001);
- *Lomont v. O'Neill*, 285 F.3d 9 (D.C. Cir. 2002);
- *U.S. v. Otiaba*, 862 F. Supp. 251, 253-54 (D.N.D. 1994) (declining to follow 2d Circuit, since “that court did not have available to it Hardy’s analysis....”);
- *U.S. v. Hunter*, 843 F. Supp. 235, 246 (E.D. Mich. 1994);
- *Cisewski v. Department of Treasury*, 773 F. Supp. 148, 150 (E.D. Wis. 1991);
- *In re Two Seized Firearms*, 127 N.J. 84, 602 A.2d 728, 731 (1992);
- 2A KEVIN O’MALEY, ET AL., FEDERAL JURY PRACTICE AND INSTRUCTIONS §39.09 at 36 (5th Ed. 2000);
- 78 Wisc. Opinions of the Atty’y Gen. 22 (1989).

The Second Amendment and the Historiography of the Bill of Rights, 4 J. OF LAW & POLITICS 1 (1987).

Armed Citizens and Citizen Armies: Origins of the Second Amendment, 9 HARV. J. OF L. & PUB. POLICY 559 (1986). Cited in LAURENCE TRIBE, AMERICAN CONSTITUTIONAL LAW 897 n. 211 (3d Ed. 2000).

Fields & Hardy, *The Militia and the Constitution*, 136 MILITARY L. REV. 1 (1992).

Product Liability and Weapons Manufacture, 10 J. OF PRODUCTS LIABILITY 61 (1987).

Fields & Hardy, *The Third Amendment and the Issue of the Maintenance of Standing Armies*., 35 AMER. J. OF LEGAL HISTORY 393 (1991).

Strict Liability and the Manufacture of Weapons, 20 WAKE FOREST L. REV. 541 (1984).

Legal Restriction of Firearm Ownership as an Answer to Violent Crime; What was the Question?, 6 HAMLINE L. REV. 391 (1983).

Harris v. McRae--The Clash of a Nonenumerated Right with Legislative Control of the Purse, 31 CASE-WESTERN RES. UNIV. L. REV. 465 (1981).

Firearms Ownership and Regulation, 20 WM & MARY L. REV. 235 (1978).

Privacy and Public Funding: Maher v. Roe as the Interaction of Roe v. Wade and Dandridge v. Williams, 18 ARIZ. L. REV. 903 (1977). Cited in:

- *D.R. v. Mitchell*, 456 F. Supp. 609, 614, 615, 622 (D. Utah 1978);
- *Women's Health Services v. Maher*, 482 F. Supp. 725, 735 (D. Conn. 1980).

Hardy & Stompoly, *Of Arms and the Law*, 51 CHI-KENT L REV. 62 (1974).

Note, *Informants' Statements as a Basis for Stop and Frisk*, 15 ARIZ. L. REV. 677 (1973).

Books

DRED SCOTT: THE INSIDE STORY (2019).

MASS KILLINGS: MYTH, REALITY, AND SOLUTIONS (2018)

I'M FROM THE GOVERNMENT, AND I'M HERE TO KILL YOU: THE HUMAN COST OF OFFICIAL NEGLIGENCE (2017). This is actually a treatise calling for reform of the Federal Tort Claims Act and the Federal Rules of Criminal Procedure.

DAVID T. HARDY & JASON CLARKE, MICHAEL MOORE IS A BIG FAT STUPID WHITE MAN (2004) Six weeks on N.Y. Times bestseller list. (The publisher *insisted* on the title, by the way; it was a successful marketing ploy.)

THIS IS NOT AN ASSAULT (2001).

ORIGINS AND DEVELOPMENT OF THE SECOND AMENDMENT (1986).

THE COMPLETE SHORTWAVE LISTENERS' HANDBOOK (3d ed. 1986).

Monographs and Anthologies

OF MICE AND MEN: SURVIVING ENDANGERED SPECIES ACT LITIGATION (1993).

Chapters dealing with checks and balances, impeachment, bills of attainder, and a biography of James Madison in THE NEW FEDERALIST PAPERS (1989).

Miscellaneous

Directed a two-hour documentary film on the 2d and 14th Amendments, “In Search of the Second Amendment,” nominated for the ABA’s Silver Gavel Award. Creator of four websites and a blog, www.armsandthelaw.com. President, Tucson Rod and Gun Club.

PRESENTATIONS

In 2018, I have presented at Southern Illinois University’s symposium on “Exploring the Second Amendment: 10 Years after *Heller*,” and at the St. Louis Civil War Roundtable on the *Dred Scott* case. In past years I have given Pima County Bar CLEs on Supreme Court watching and on bringing federal test cases. Back when Barbara Atwood taught Civil Procedure, Leighton Rockafellow and I would give an annual presentation on personal jurisdiction. I have often spoken at the National Firearm Law Symposium; in 2010, due to another speaker’s emergency I had to give two presentations. The audience evaluations rated them No. 1 and 2 of the symposium, with scores of 3.94 and 3.88, where 4 was the highest rating.

I have appeared on ABC Nightline, Book TV, Court TV (twice), Scarborough Country and over a hundred radio shows.

EMPLOYMENT HISTORY

Private Practice, Tucson, Az. 1992 – present

Primarily civil litigation and appeals. Admitted to U.S. Supreme Court, Arizona Supreme Court, 4th, 6th, and 9th Circuits, U.S. District Courts for Arizona, Colorado, and District of Columbia.

Reported decisions include:

- *Mack v. United States*, consolidated with *Pritzn v. United States*, 521 U.S. 898 (1997) (10th Amendment, 5-4 win);
- *State v. Detrich*, 178 Ariz. 380, 873 P.2d 1302 (1994) (5-0 reversal of murder conviction and death penalty);
- *Arizona Libertarian Party v. Board of Supervisors of Cochise County*, 205 Ariz. 345, 70 P.3d 1146 (App. 2003) (election statutes);
- *Arizona Libertarian Party v. Schmerl*, 200 Ariz. 486, 28 P.3d 948 (App. 2001) (First Amendment: successful defense of Arizona electoral system);
- *Arizona Libertarian Party, Inc. v. Bayless*, 351 F.3d 1277 (9th Cir. 2003) (successful First Amendment attack on State electoral system);
- *NRA v. Magaw*, 132 F.3d 272 (6th Cir. 1997) (standing and ripeness);
- *A. Uberti & C. v. Leonardo*, 181 Ariz. 565, 892 P.2d 1354 (1995) (*In personam* jurisdiction in product liability case).

Office of the Solicitor, Dep't of the Interior, Wash. DC, 1982-1992

- Ten years' agency work, mainly representing U.S. Fish and Wildlife Service, occasionally detailed to other federal agencies. GS-14.
- Continuous work under Endangered Species Act, NEPA, etc.
- Chief legal advisor to FWS Law Enforcement Division.
- Litigation: Represented FWS in variety of federal lawsuits, including *US v. Dion*, 476 U.S. 734 (1986) (Eagle Act abrogates Indian hunting rights).
- Mineral, Oil and Gas Rights: Held primary staff responsibility for preparing Interior's legal position on oil, gas and mineral rights underlying Nat'l Wildlife Refuge System (68,000,000 acres) lands.
- Water Rights & Wilderness: Attorney Trish Bangert and I prepared the pivotal Solicitor's Opinion on water rights in designated Wilderness Areas. The position was subsequently adopted by the Attorney General as the position of the entire government.

Partner, Sharp, Sando, Alfred & Hardy, Tucson, 1976-1982

- Was assigned individual rating of "b(v)" by Martindale-Hubbell.
- Small firm general practice, torts, contracts, criminal defense.

Associate, Browning & Wilson-Druke, Tucson, 1975-76

- Left when partners dissolved the firm.