



## Peter d'Errico Papers

1976-2011

8 boxes (11 linear ft.)

Call no.: FS 154

### Collection overview

With a law degree from Yale in hand in 1968, Peter d'Errico began work as a staff attorney with Dinebeina Nahiilna Be Agaditahé Navajo Legal Services in Shiprock, Arizona, representing indigenous People's interests in the US courts. Stemming from his frustrations with a stilted legal system, however, he evolved into an "anti-lawyer," and in 1970 returned to academia. Joining the faculty at UMass Amherst, d'Errico focused his research and writing on the legal issues affecting indigenous Peoples, and he regularly taught courses on indigenous People's law and the role of the law in imposing state systems on non-state societies. His impact was instrumental in establishing the Department of Legal Studies. Both before and after his retirement in 2002, d'Errico also remained active as a practitioner in indigenous People's law.

The d'Errico collection contains a significant record of d'Errico's high profile legal work in indigenous People's law, including his work with Western Shoshone land rights and on the case *Randall Trapp, et al. v. Commissioner DuBois, et al.* In *Trapp*, a long-running, but ultimately successful First Amendment case, he and Robert Doyle represented prisoners in the Massachusetts Department of Corrections seeking to establish a sweat lodge.

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## Background on Peter d'Errico

Peter d'Errico is a professor emeritus at University of Massachusetts Amherst, and a lawyer for indigenous People's rights.

Born in West Virginia, d'Errico received his BA in Philosophy from Bates College before attending Yale Law School, graduating in 1968. A move west to work as a lawyer in the Shiprock, Arizona, office of Dinebeina Nahiilna Be

Agaditahe, Inc., the Navajo Nation Legal Services program, would change his career, and life, forever. Lyndon Johnson's Great Society War on Poverty legislation provided legal services and lawyers in civil cases, and d'Errico was drawn to the work immediately. His experience in Shiprock provided not only an introduction to indigenous People's legal issues, but also a change in his worldview and understanding of the law and politics, coming to see his own work and usefulness from the point of view of another culture. While there, d'Errico worked on developing a juvenile code of procedure that would integrate Navajo clan practices and United States due process standards, and on a class action lawsuit against used car dealers who exploited Navajo customers. However, despite some successes, d'Errico also felt more like a character playing a role within the Anglo legal system than a useful advocate for his clients, people from a community for which those laws and procedures were not only confusing and other, but imposed via an oppressive power structure.

Remaining in the legal field, d'Errico became what he referred to as an "anti-law lawyer," grounding his work and teaching in his understanding of the history of the law as an imposition of the state on non-state communities. He began teaching legal studies at the University of Massachusetts Amherst, with a focus on indigenous People's law, including his annual class "Legalization of American Indians," and was influential in the development of the Legal Studies department. D'Errico also continued to work as a lawyer, and consulted on a number of cases relating to indigenous People's rights. This included work with the Western Shoshone National Council concerning indigenous land rights; a legal dispute between Mashpee Wampanoags and several Cape Cod townships over fishing and shell fishing rights; and *Randall Trapp et al. v. Commissioner Dubois et al.*, a decade long legal battle involving the religious freedom and first amendment rights of incarcerated indigenous People. D'errico retired from UMass in 2002, but continues to write on legal, cultural, and personal matters, and participates in local government in his hometown of Leverett, MA.

## Scope of collection

The d'Errico Papers contain a significant record of d'Errico's high profile legal work in indigenous People's law. The collection is organized into three series, mapping to different legal cases. Series 1 documents *Randall Trapp et al. v. Commissioner Dubois et al.*, a long-running, but ultimately successful First Amendment case, where he and Robert Doyle represented prisoners in the Massachusetts Department of Corrections seeking to establish a Purification Lodge. Series 2 documents d'Errico's work with the Western Shoshone National Council (WSNC) in Nevada from the 1990s through the 2000s on various land ownership and use cases. Series 3 covers several cases related to indigenous fishing and shell fishing rights in Massachusetts and Rhode Island, particularly conflicts between Mashpee Wampanoag shell fishers and local

governments in the Cape Cod area.

## Series descriptions

### **Series 1. *Trapp et al v. Dubois***

**1983-2011**  
*(bulk 1995-*  
**2003)**

**4 boxes (6**  
**linear feet)**

*Randall Trapp et al. v. Commissioner Dubois et al.* was a major case of d'Errico's, involving the religious freedom of incarcerated indigenous People. He worked with inmates at North Center Correction Institute (NCCI) in Gardner, MA, and The Massachusetts Correction Institute in Shirley, MA. Randall Shield Wolf Trapp, along with Chris Black Crow Bousquet, William White Feather Durfee, and others at NCCI Gardner filed a lawsuit against Commissioner Lawrence Dubois, John Marshall, P.J Chalapatras, and Michael Dorian over discriminatory restrictions on the practice of indigenous People's spirituality in Massachusetts prisons.

They argued that their religious freedom was violated by confiscation of sacred headbands, pipes, and herbs, as well as a requirement that inmates prove membership to "federally recognized tribes" in order to join the Weekly Circle. They claimed acts of aggression, intimidation, and harassment by Department of Corrections (DOC) officers and employees. They also fought for the establishment of Purification (sweat) Lodges at Massachusetts correctional facilities, based on their success in other state-run prisons throughout the United States. In May of 1995, the judge approved a preliminary injunction, requiring the DOC to allow the use of Headbands and other sacred items, and to return sacred items which had been confiscated. In October of that same year, the plaintiffs filed a motion of contempt, stating that the DOC was violating the injunction by continuing to deny the use of sacred items. They also filed for certification as a class action lawsuit so as to secure protections for inmates at other MA correctional facilities. Both motions were denied. In February of 1997, a motion to add more plaintiffs was also denied. In December 1999 the case went to trial, and on May 4 2000, the court ruled against the establishment of Lodges but in favor of plaintiffs regarding sacred items and membership criteria for the Circle. In June, Trapp and the other plaintiffs filed an appeal to the court ruling on Purification Lodges, and a settlement agreement between the plaintiffs and the DOC was reached in 2003. Lodges were to be built at a select number of MA correctional institutions, however

in 2004 all ceremonies were halted because of alleged health concerns. In 2015 the court ruled this a violation of the settlement and of the Religious Land Use and Institutionalized Persons Act of 2000.

Series 1 documents this decade long legal battle. The bulk of the series is correspondence with plaintiffs and inmates at NCCI Gardner and MCI Shirley, including Randall Shield Wolf Trapp, William White Feather Durfee, and Chris Black Crow Bousquet, with whom d'Errico kept a regular correspondence for over fifteen years.\* Bousquet also sent a number of drawings and other artwork to d'Errico. Additional correspondence is between d'Errico, his legal partner Robert T. Doyle Jr., and the DOC legal team, specifically Anne McCarthy and Joan Kennedy.

The series also contains court memos, reports, briefings, affidavits, DOC grievance reports, and other legal documents relating to the Trapp case. Legal writings, newspaper articles, essays, and other court cases that d'Errico used for research on Trapp v. Dubois are also compiled. The series is arranged alphabetically, with the creator's original organization in mind and maintained wherever possible. Correspondence and Trapp legal document subsections are in chronological order.

\* While attorney-client privilege might apply to some of the materials in this collection, according to d'Errico, the materials "were understood by the attorney and plaintiff inmates to be available for use in public hearings and documents," and are therefore available for research.

## **Series 2. Western Shoshone National Council (WSNC)**

**1980-2011  
(bulk 1990-  
2002)**

**3 boxes (4.5  
linear feet)**

This series documents d'Errico's work with the Western Shoshone National Council (WSNC) in Nevada from the 1990s through the 2000s. During this time, he advised or worked directly on several court cases, including *Western Shoshone National Council v. The United States and Oro Nevada Resources*; *Raymond Yowell et al. v. The United States et al.*; and *The State of Nevada v. Tim Dann*. Most of these legal battles were against the United States government and the Bureau of Land Management, involving conflicts over property ownership and use, such as trespassing and grazing privileges. A major concern at the time was the distribution of the Indian Claims Commission's (ICC) settlement award. Many tribes in the Western Shoshone Nation refused to accept the settlement money as they believed it would be taken as a ceding of their land to the U.S. Government. The debate over the claims award and the fight against the Western Shoshone Claims Distribution Act of 2004 are well

documented in this series. The 1863 Treaty of Ruby Valley, and other treaties are frequently cited in articles, essays, and legal documents related to land disputes. D'errico and others conducted a large amount of background research on legal and historical precedent, most of which is included. Other key issues revolved around gold and mineral mining, nuclear testing, and waste dumping. WSNC protested the use of Western Shoshone land for such activities, arguing that it violated their rights to the land and posed environmental and health risks.

The bulk of the series relates to the many court cases and civil suites in which d'Errico was involved. This includes correspondence, trespassing notices, case filings, written and recorded testimony, and other legal documents. The series also contains materials related to the ICC award distribution, such as letters to congressional representatives, senate committees, and then-President Bill Clinton, as well as newspaper articles, WSNC meeting minutes and newsletters, and other documents. Also included are articles, flyers, and brochures about mining and nuclear testing and waste dumping. The series also contains several publications, articles, and clippings concerning other Western Shoshone issues.

### Series 3. Fishing Rights

1976-2002

1 box (.5 linear feet)

This series documents several cases related to indigenous fishing and shell fishing rights in Massachusetts and Rhode Island. The bulk of the series involves conflicts between Mashpee Wampanoag shell fishers and local governments in the Cape Cod area. The defendants in these cases were accused of violating shell fishing regulations related to conservation. However, members of the Mashpee Wampanoag tribe claimed exemption through various treaties and indigenous rights laws, arguing that shell fishing is a key aspect of Wampanoag life and is crucial to their livelihoods. The Commonwealth's case was weakened by their allowance of commercial jet clamming. Other cases include *The Commonwealth of Massachusetts v. Martin Hendricks*, *The Commonwealth v. Michael J. Maxim and David S. Green*, *The Commonwealth of Massachusetts v. Glenn A. Marshall* and the subsequent lawsuit *Glenn A. Marshall v. Charles Merritt and Jeffrey Bailey*. D'errico also worked on another fishing case, *The State of Rhode Island v. Donald P. Hopkins*.

The bulk of the series is documents related to these court cases, such as filings, memos, and affidavits, as well as a large collection of research related to indigenous shell fishing rights, which covers laws, treaties, and similar court cases. The series also contains newspaper clippings and some correspondence.

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(bulk 1995-  
2003)**

**4 boxes (6  
linear feet)**

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**Series 2. Western Shoshone National Council  
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