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Peter d'Errico Papers

1976-2011

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[About SCUA](#)

[SCUA home](#)

[Credo digital](#)

[Scope](#)

[Overview](#)

[Series 1. Trapp et al v. Dubois](#)

[Series 2. Western Shoshone National Council \(WSNC\)](#)

[Series 3. Fishing Rights](#)

[Inventory](#)

[Series 1. Trapp et al v. Dubois](#)

[Series 2. Western Shoshone National Council \(WSNC\)](#)

[Series 3. Fishing Rights](#)

[Admin info](#)

[Download](#)

[xml version](#)

[print version \(pdf\)](#)



[Read collection overview](#)

With a law degree from Yale in hand in 1968, Peter d'Errico began work as a staff attorney with Dinebeiina Nahiilna Be Agaditahe Navajo Legal Services in Shiprock, New Mexico, 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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Prison issues

Social justice

UMass (1947-)

UMass faculty

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, New Mexico, office of Dinebeiina 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. Chalapatias, 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 suits 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.

Inventory

Series 1. *Trapp et al v. Dubois*

1983-2011 (*bulk*1995-2003)

4 boxes (6 linear feet)

Affidavits

Trapp and Durfee

2000 May 25

Box 1: 1

Trapp

2001

Box 1: 2

Alexander, Wayne and DNA Law

2000 Sep 06

Box 1: 3

Blake, Joseph Gentle Moose Lawsuit

2007

Box 1: 4

Bousquet, Chris Black Crow Art

ca.1995-2011

Box 1: 5-8

Case Notes

1993

Box 1: 9

Case Notes

1993-1994

Box 1: 10

Case Notes

1995

Box 1: 11

Case Notes

1996

Box 1: 12

Case Notes

1997

Box 1: 13

Case Notes

1998

Box 1: 14

Case Notes

1999

Box 1: 15

Case Notes

1995-2000

Box 8: 1
Case Research

Lodges in Prisons

1993-1998

Box 1: 16

Related Court Cases Packet

1994

Box 1: 17

Department of Corrections Policies

1994-1995

Box 1: 18

Alvarez v. Flynn

1995

Box 1: 19

Coombs v. Dubois et al

1995

Box 1: 20

Department of Corrections and Legal Packet regulations

1995

Box 1: 21

Manor v. Rakiey

1995

Box 1: 22

Nadeau v. Dubois et al

1995

Box 1: 23

Legal Writings and Legislature

ca.1995

Box 1: 24

Native American Heritage Commission v. California State University

1996

Box 1: 25

Lemay v. Dubois

1996

Box 1: 26

Related Court Cases

1996-1997

Box 1: 27

Nevada State Prison Court Case

2009

Box 1: 28

Clippings

2000

Box 1: 29

Cochise, Ciye Nino

1999

Box 1: 30

Commonwealth v. Durfee Materials Packet

2008 Apr

Box 1: 31

Correspondence

Babcock, Richard Coyote Seeking

1998

Box 1: 32

Babcock, Richard Coyote Seeking

1999
Box 1: 33-37
Babcock, Richard Coyote Seeking
2000-2001
Box 4: 1
Babcock, Richard Coyote Seeking
2002
Box 4: 2
Bailey, Bernard Bold Bear
2001
Box 4: 3
Bailey, Bernard Bold Bear
2002
Box 4: 4
Beesos, Donald
2001, 2005
Box 1: 38
Blake, Joseph Gentle Moose
2003-2005
Box 4: 5
Blake, Joseph Gentle Moose
2007
Box 1: 39
Blake, Joseph Gentle Moose
2009 Feb
Box 1: 40
Bousquet, Chris Black Crow
1995
Box 4: 6
Bousquet, Chris Black Crow
1996 Jan-Aug
Box 4: 7-8
Bousquet, Chris Black Crow
1997
Box 4: 9-19
Bousquet, Chris Black Crow
ca.1997-2004
Box 1: 41
Bousquet, Chris Black Crow
1998
Box 4: 20-24
Bousquet, Chris Black Crow
1999
Box 4: 25-26
Bousquet, Chris Black Crow
2000
Box 4: 27-30
Bousquet, Chris Black Crow
2001
Box 4: 31
Bousquet, Chris Black Crow
2002
Box 4: 32
Bousquet, Chris Black Crow
2003
Box 4: 33-35
Bousquet, Chris Black Crow
2004
Box 4: 36

Bousquet, Chris Black Crow
2005-2006
Box 4: 37
Bousquet, Chris Black Crow
2007
Box 4: 38
Bousquet, Chris Black Crow
2008
Box 4: 39-40
Bousquet, Chris Black Crow
2009
Box 4: 41
Bousquet, Chris Black Crow
2010
Box 4: 42-43
Bousquet, Chris Black Crow
2011
Box 4: 44-45
Bousquet, Chris Black Crow
ca.1995-2011
Box 4: 46
Breault, Mark Black Eagle
1999-2003
Box 4: 47
Connors, David Thunder Cloud
1998
Box 1: 42
Connors, David Thunder Cloud
1998-2000
Box 4: 48
Carrico, William Weasel
2000
Box 4: 49
Crowley, Thomos Locco
1995
Box 4: 50
Crowley, Thomos Locco
1996
Box 4: 51
Cryer, Dereck
2004
Box 4: 52
Cryer, Dereck
2006
Box 4: 53
Cryer, Dereck
2007-2008
Box 4: 54
Dekroon, Ron
1995-1996
Box 1: 43
Department of Corrections Non-Delivered
2007-2008
Box 1: 44
Doyle, Robert T. Jr.
1995-1999
Box 1: 45
Durfee, William White Feather
1992-1993

Box 4: 55
Durfee, William White Feather
1994

Box 4: 56-57
Durfee, William White Feather
1994-2001

Box 1: 46
Durfee, William White Feather
1995

Box 4: 58-61
Durfee, William White Feather
1996

Box 4: 62-64
Durfee, William White Feather
1997

Box 4: 65
Durfee, William White Feather
1998

Box 4: 66
Durfee, William White Feather
1999

Box 4: 67-69
Durfee, William White Feather
2000

Box 4: 70
Durfee, William White Feather
2001

Box 4: 71-73
Durfee, William White Feather
2002

Box 4: 74-75
Durfee, William White Feather
2005

Box 4: 76
Harper, Timothy Talking Thunder
2004

Box 4: 80
Hudman, Melvin Stomps in the Rain
1999-2000

Box 4: 77
Hudman, Melvin Stomps in the Rain
2001 Nov 15

Box 1: 48
Hudman, Melvin Stomps in the Rain
2001

Box 4: 78
Hudman, Melvin Stomps in the Rain
2003

Box 4: 79
Hudman, Melvin Stomps in the Rain
2004-2005

Box 8: 2
Hudman, Melvin Stomps in the Rain Native American Spiritual Circle Packet
2004 Jun 08

Box 1: 49
Jackson, Anthony, re: Muslim Inmate Religious Expression Rights
2004

Box 1: 50
Kennedy, Joan

2001
Box 1: 51
Kennedy, Joan
2002 Mar-Jun
Box 1: 52
Kennedy, Joan
2002 Jul-Aug
Box 1: 53
Lefland, Donald
2003
Box 1: 54
Lemay, Kevin Grayhawk
1995
Box 4: 81
Lemay, Kevin Grayhawk
1996
Box 4: 82
Lemay, Kevin Grayhawk
1997-1998
Box 4: 83
Manly, James Crow Feather
2000
Box 4: 84
Manly, James Crow Feather
2001
Box 4: 85
McCarthy, Ann
1993-1997
Box 1: 55
McCarthy, Ann
1999-2000
Box 1: 56-57
McCarthy, Ann
2000
Box 1: 58
Monteiro, Roque W.
2000-2001
Box 1: 59
Native American Spiritual Awareness Counsel
1995
Box 4: 86
Norris, William A.
1995-1999
Box 1: 60
O'Ward, Elijah Running Rabbit
2000-2002
Box 1: 61
Pallas, Fredrick Night Hawk
1999 Oct 18
Box 4: 87
Pallas, Fredrick Night Hawk
2001
Box 4: 88
Pallas, Fredrick Night Hawk
2002
Box 1: 62
Perley, Leon Blue Wolf
1996
Box 1: 63

Perley, Leon Blue Wolf
1997
Box 4: 89
Preston, James V.
1992-1993
Box 1: 64
Reed, Timothy Little Rock
1995
Box 1: 65
Reed, Timothy Little Rock
1999
Box 1: 66
Sizmore, Ted
1995
Box 4: 90
Sizmore, Ted
1996
Box 1: 67
Stevens, William G.
2001, 2005
Box 1: 68
Superintendant Pepe, Peter
1995
Box 1: 69
Trapp, William Shield Wolf
1993-1994
Box 4: 91
Trapp, William Shield Wolf
1995
Box 4: 92
Trapp, William Shield Wolf
1996
Box 4: 93
Trapp, William Shield Wolf
1997
Box 4: 94
Trapp, William Shield Wolf
1998
Box 4: 95
Trapp, William Shield Wolf
1999
Box 4: 96
Trapp, William Shield Wolf
2002
Box 4: 97
Trapp, William Shield Wolf
2003-2004
Box 4: 98
Trapp, William Shield Wolf
2005
Box 4: 99
Trapp, William Shield Wolf
2006-2008
Box 1: 70
Trapp, William Shield Wolf
2007
Box 1: 71
Trongeau, Nelson Colt
2000

Box 1: 72
Vega, Richard
2001
Box 1: 73
Various
1995-1998
Box 1: 74
Various
1999
Box 1: 75
Various
2000-2001
Box 1: 76
Various
2002-2003
Box 1: 77
Various
2005
Box 1: 78
Court Memos

Appeals Court
2007-2008
Box 5: 6
Worcester Superior Court
1995-2000
Box 5: 7
Worcester Superior Court
2002
Box 5: 8
Worcester Superior Court
2003
Box 5: 9
Worcester Superior Court
2007
Box 5: 10
Worcester Superior Court
2008-2009
Box 5: 11
Cryer, Dereck Legal Packet
2004 Apr 14
Box 1: 79
Cryer, Dereck Legal Packet
2004 May 06
Box 1: 80
Durfee, William White Feather

Department of Corrections Greivence Reports
2001 Mar
Box 1: 81
Legal
1995 Jan
Box 1: 82
Legal
1995
Box 1: 83
Legal Packet

2000 Apr 05
Box 1: 84
Legal Packet
2000 Sep 06
Box 1: 85
Legal Packet
2001 Jul 16
Box 1: 86
Harvard Law Review excerpts
1997
Box 8: 3
Hudman, Melvin Stomps in the Rain
1998 May 29
Box 1: 87
Hudman, Melvin Stomps in the Rain
1998
Box 1: 88
Massachusetts Bill Proposal, "Indian Worship at Correctional Facilities"
1997
Box 1: 89
Massachusetts Criminal Law (Annotated)
1994 Oct
Box 1: 90
Massachusetts Correctional Institute-Shirley Program Participation and Volunteer Requests
1995
Box 1: 91
Massachusetts Correctional Institute-Shirley Religious Freedom
2008
Box 1: 92
Medicine Story
1997
Box 1: 93
Native American Spiritual Awareness Council

Inventory and Expense Reports

1993-1998
Box 1: 94
Logbook
2000 Jun
Box 5: 12
Purpose, Policy, Procedures and Rules of Order
1999
Box 1: 95
North Central Correctional Institute Disciplinary Reports
1994-1998
Box 1: 96
North Central Correctional Institute Visiting Rules and Program Participation Application
ca.1995
Box 1: 97
Pre-Religious Freedom Restoration Act Cases
1996
Box 8: 4
Publications

The American Indian Report

1998
Box 2: 1

Dawnland Newsletter

1995

Box 2: 2

Native American Rights Fund Legal Review

1995

Box 2: 3

Prison Connection

1996-1997

Box 2: 4

Shaman's Drum

1994

Box 2: 5

Talking Stick

1993

Box 2: 6

Winds of Change

1997-1998

Box 2: 7

Prison Drug Testing

1999

Box 2: 8

Proposal for Medicine Teachers Association

1995

Box 2: 9

Reed, Timothy Little Rock

1995/2000

Box 2: 10

Religious Freedom Restoration Act

1994

Box 2: 11

"The Right to Pray in a House of Iron"

1998

Box 2: 12

"The Right to Pray in a House of Iron"

1998

Box 2: 12

Trapp Class Action

Filings

1993

Box 2: 13

Motion for Default Judgment

1993 Aug-Nov

Box 2: 14

Request for Admission

1993-1993

Box 2: 15

Amended Civil rights complaint and Response

1993

Box 2: 16

Facts of the Case

1994

Box 2: 17

Timeline

1994

Box 2: 18

Defence Interrogation

1994 Feb

Box 2: 19
Motion for Summary Judgment
1994 Apr
Box 2: 20
Motion for Extension of Time
1994 May-Jun
Box 2: 21
Stipulation to Dismiss
1995 May
Box 2: 22
Trapp

Plaintiff Interrogations
1994 Feb
Box 2: 23
Tort Claims/Affidavits
1994-1996
Box 2: 24-29
Complaint Drafts
1995 Mar
Box 2: 30
Affidavits for Civil Complaint
1995 Mar
Box 2: 31
Motion for Preliminary Injunction Draft, Notes
1995 Apr
Box 2: 32
Defendant Response to Plaintiff Complaint
1995 May
Box 2: 33
Motion for Preliminary Injunction
1995 May
Box 2: 34
Opposition to Preliminary Injunction
1995 May
Box 2: 35
Decision on Motion for Preliminary Injunction, Court Order
1995 May
Box 2: 36
Motion for Appearance of Counsel
1995 May
Box 2: 37
Plaintiff Motion for Contempt
1995 Aug
Box 2: 38
Affidavits in Support of Contempt
1995 Aug
Box 2: 39
Opposition to Motion of Contempt
1995 Sep
Box 2: 40
Motion for Class Action Certification
1995 Sep-Oct
Box 2: 41
Opposition to Class Action Certification
1995 Sep-Oct
Box 2: 42
Decision on Motion for Class Action Certification

1995 Oct
Box 2: 43
Notification of Civil Complaint Filing
1995 Nov
Box 2: 44
Plaintiffs' Exhibits
1995
Box 2: 45
Motion for Enlargement
1996
Box 2: 46
Motion to Compel Discovery
1996 Jun
Box 2: 47
Production of Documents
1996 Jun
Box 2: 48
Originals - Discovery Motion
ca.1996
Box 2: 49-50
Discovery Packet
ca.1996
Box 2: 51
Plaintiff First Interrogatories, Defendant Response
1996
Box 2: 52
Order on Motion for Partial Summary Judgement
1996
Box 2: 53
Motion to Compel Joinder
1996
Box 2: 54
Joinder
1996
Box 2: 55
Joiner, Affidavits of Indigency
1996
Box 2: 56
Decision on Motion to Compel Joinder
1997 Feb
Box 2: 57
Deposition: Bailey, Bernard
1997 Aug
Box 2: 58
Deposition: Bousquet, Chris
1997 Aug
Box 2: 59
Deposition: Manley, James
1997 Aug
Box 2: 60
Deposition: Trapp, Randall
1997 Aug
Box 2: 61
Witness Testimony Cassettes
1997
Box 2: 62
Order on Motion for Summary Judgement
1998 Feb
Box 2: 63

Pre-Trial Conference
1998 May
Box 2: 64
Norris, William A. - Attorney Discharge
1999 Nov
Box 2: 65
Defendant Motion in Limine
1999 Dec
Box 2: 66
Defendant Motion to Dismiss
1999 Dec
Box 2: 67
Trapp v. Dubois Appeal: Appendix vo. 2 Transcript vo. 1
1999 Dec
Box 2: 68
Trapp v. Dubois Appeal: Appendix vo. 3 Transcript vo. 2
1999 Dec
Box 2: 69
Trapp v. Dubois Appeal: Appendix vo. 4 Selected Exhibits in Evidence
1999 Dec
Box 2: 70
Trapp v. Dubois Appeal: Appeal Appendix vo. 1
2000 Jan
Box 2: 71
Trapp v. Dubois Appeal: Brief for Appellants
2000 Dec
Box 2: 72
Trapp v. Dubois Appeal: Copies
1999-2000
Box 2: 73
Appeal
2000
Box 2: 74
Docket Entries Summary, Timeline
2000
Box 2: 75
Past Trial Memorandum, Requests for Findings & Rulings
2000 Jan
Box 2: 76
Decision upon Complaint
2000 May
Box 2: 77
Trapp v. Dubois. Court Ruling
2000 May
Box 2: 78
Appeal Filing, Notice
2000 Jun
Box 2: 79
Plaintiff Certificate of Transcript, Affidavit of Indigency
2000 Jun
Box 2: 80
Contempt Action Materials
2000 May-Aug
Box 2: 81
Contempt Action Documents Packet
2000 Aug
Box 3: 1
Contempt Action Affidavits, Materials
2000 Jun

Box 3: 2-4
Appeal, Brief for Appellants
2000 Dec
Box 3: 5
Contempt Action Affidavits, Materials
2000 Dec
Box 3: 6
MA Commission on Indian Affairs: Brief Amicus Curiae
2000 Dec
Box 3: 7
Trial, Witness Questioning Prep
ca.2000
Box 3: 8
Cape Codders Against Racism: Brief Amicus Curiae
2000-2001
Box 3: 9-10
Contempt Action Materials
2001 Jan-Mar
Box 3: 11
Legal Materials and Grievances Packet
2001 Feb
Box 3: 12
Trapp v. Dubois Appeal: Brief of Defendants - Appellees
2001 May
Box 3: 13
Appeal Materials
2001
Box 3: 14
Contempt Action Affidavits
2001
Box 3: 15
Kennedy, Joan - Materials Packet
2002 Jul
Box 3: 16-17
Settlement Materials Packet
2002 Dec
Box 3: 18
Appeal Materials
2002
Box 3: 19
Pro se: Kennedy, Joan - Materials Packet
2002
Box 3: 20-22
Decision on Motion for Contempt
2003 Jan
Box 3: 23
Settlement Materials
2003 Jan
Box 3: 24
Stipulation of Dismissal/Release
2003 Feb
Box 3: 25
Official Settlement Agreement
2003 Feb
Box 3: 26
Final Settlement Agreement and Release
2003 Mar
Box 3: 27
Settlement Violation Materials

2003 Jun
Box 3: 28
Attorney Fees Documents
2003 May
Box 3: 29
Attorney Fees Legal Document Packet
2003 Oct
Box 3: 30
Motion for Determination of Fees-Copy
2003 Oct
Box 3: 31
Statement of Facts - Attorney Fees-copy
2003 Oct
Box 3: 32
Support of Motion for Determination of Attorney Fees-Copy
2003 Oct
Box 3: 33
Opposition to Determination of Attorney Fees
2003 Nov
Box 3: 34
Attorney Fees Legal Document Packet
2004 Jan
Box 3: 35
Attorney Fees Materials
2003-2004
Box 3: 36
Motion for Determination of Attorney Fees
2004
Box 3: 37
d'Errico, Peter & Doyle, Robert T. Jr. Affidavits
2007 Mar
Box 3: 38
"Blood"
ca.1994-2000
Box 3: 39
"Prior Knowledge"
ca.1994-2000
Box 3: 40
Miscellaneous
ca.1994-2000
Box 3: 41
Standards, etc.
ca.1995-2000
Box 3: 42-43
Video: Great Spirit Within the Hole (VHS)
1983
Box 3: 44
Court Memos: Appeals Court
2007-2008
Box 3: 45
Court Memos: Worcester Superior Court
1995-2000
Box 3: 46
Court Memos: Worcester Superior Court
2002
Box 3: 47
Court Memos: Worcester Superior Court
2003
Box 3: 48

Court Memos: Worcester Superior Court
2007
Box 3: 49
Court Memos: Worcester Superior Court
2008-2009
Box 3: 50
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2000 Jun
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"A Brief History & Analysis of the Statehood Process"
1985
Box 3: 52
"The Best Democracy Money Can Buy"
ca.2003
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Bureau of Land Management Appeal Documents
2000
Box 3: 54
Bureau of Land Management Appeal Documents
2002
Box 3: 55-58
Bureau of Land Management Appeal Documents
2003
Box 3: 59-60
Bureau of Land Management Elko Office Project/ Planning Schedule
1997 Dec
Box 3: 61
Bureau of Land Management Grazing Dispute
1996
Box 3: 62
Bureau of Land Management Grazing Dispute
1997
Box 3: 63
Bureau of Land Management Grazing Dispute
1998
Box 3: 64-73
Bureau of Land Management Grazing Dispute
1999
Box 3: 74-78
Bureau of Land Management Grazing Dispute
2000
Box 3: 79
Bureau of Land Management Grazing Dispute
2002
Box 3: 80
Bureau of Land Management Grazing Dispute
2005-2006
Box 3: 81
Clippings
1995-2002
Box 5: 1-5
Clippings: Yowell, Raymond
2002
Box 5: 6
Coalition for Local Sovereignty
1997-1999

Box 5: 7
Court of Indian Offenses Finding of Fact, Conclusion of Law
2010 Mar

Box 5: 8
Court Rules, Practices, Forms
1992-1995

Box 5: 9
Correspondence: WSNC Letter President Clinton
1996

Box 5: 10
Correspondence: WSNC & Taiana, Jorge
2000 May-Jul

Box 5: 11
Correspondence: Yowell, Raymond
1996, 2005-2008

Box 8: 6
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2010-2011

Box 5: 12
Corporation of Newe Sogobia
1999

Box 5: 13
d'Errico, Peter - Billing
2008

Box 5: 14
Dann Case Summary
1991-2001

Box 5: 15
Danns v. United States: Documents
1991

Box 5: 16
Danns v. United States: Documents
1997

Box 5: 17-18
Danns v. United States: Documents
1999 Sep

Box 5: 19
Danns v. United States: Documents
2000 May

Box 5: 20
Danns v. United States: Human Rights Report
1999 Oct

Box 5: 21
Danns v. United States: Notes
1998

Box 5: 22
Dann, Tim Court Hearing (VHS)
1995 Sep

Box 5: 23
Dann, Tim: Materials
1995-1996

Box 5: 24
Dann, Tim Notes
1995-1996

Box 5: 25-26
Dann, Tim: Notes, Pleadings
1995-1996

Box 8: 7
Dann, Tim: Pleadings

1995
Box 5: 27-31
Dann, Tim: Pleadings
1996
Box 5: 32-35
Distribution Bill Documents
1996
Box 5: 36
Distribution Bill Documents
1998-1999
Box 5: 37
Distribution Bill Documents
2000
Box 5: 38
Distribution Bill Documents
2001
Box 5: 39-40
Distribution Bill Documents
2002
Box 5: 41-45
Distribution Bill Documents
2003
Box 5: 46-47
Distribution Bill Documents
2004-2005
Box 5: 48
Distribution Bill: Indigenous Law Institute Report
2003 Feb
Box 5: 49
Distribution Bill: WSNC Opposition Statements
2000-2003
Box 5: 50-53
Distribution Bill: WSNC Testimony
2000-2001
Box 5: 54
Distribution Bill: Testimonies
2002 Mar
Box 5: 55
Distribution Bill Notes
2002
Box 5: 56
Doyle, Robert Certificate of Good Standing
2002
Box 5: 57
Ephemera
1990-1999
Box 5: 58
Executive Order on Implementation of Human Rights Treaties
1998 Oct
Box 5: 59
Federal Jurisdiction
ca.1995
Box 5: 60
Hage v. United States
1996-1998
Box 5: 61
"How to Kill a Nation: United States Policy in Western Shoshone Country"
ca.1995
Box 5: 62

Indigenous Law Institute Documents
ca.1995
Box 5: 63
Inquire Into the Rights of the Western Shoshone Nation
ca.1995
Box 5: 64
Land Rights "Miscellaneous Research"
ca.1995
Box 5: 65
Las Vegas Federal Court Hearing Documents
1998 Nov
Box 5: 66
Legal Writings - Indigenous Land Rights, Treaties
ca.1998
Box 5: 67
Meeting With Bureau of Land Management
1996 May
Box 5: 68
Meeting with Elks Bureau of Land Management District
1996 Jul
Box 5: 69
Mining: Cortez Pipeline
1997
Box 5: 70
Mining: Oro Explorations
1996-1998
Box 5: 71-73
Mining: Miscellaneous
1997
Box 5: 74
Miscellaneous Shoshone Documents
1995
Box 5: 75
Nevada Livestock Association Court Fillings
2002 Jun
Box 5: 76
Newcomb, Steve: Nuxalk Anti-logging, State Department Essay
1996
Box 5: 77
Newcomb, Steve: Clinton's Initiative on Race, UN Human Rights
1998
Box 5: 78
Nuclear Testing: Publications
1997
Box 5: 79
Nuclear Testing: Sub-critical Tests
1996-1997
Box 5: 80
Nuclear Testing: Yucca Mt.
1997-2001
Box 5: 81
Nuclear Waste Law Suit
1996
Box 5: 82
Nuclear Waste: Yucca Mt.
1997-2002
Box 5: 83
Nuclear Waste: WSNC Testimony
2008

Box 5: 84
Organization for Security and Co-operation in Europe
2000-2002
Box 5: 85-88
Proposal to Amend Nevada Constitution
1993
Box 5: 89
Publications: Las Vegas Weekly
1999 Dec
Box 5: 90
Publications: Various
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Box 5: 91-92
Publications: Western Shoshone Defense Newsletter
1996
Box 5: 93
Railroad Dispute
ca.1996-1997
Box 5: 94-98
Railroad Dispute
2006
Box 5: 99
Railroad Dispute
2002
Box 5: 100
Research: Court Cases
1990-1999
Box 5: 101
Research: History
1990-1999
Box 5: 102
Research: Treaties
1990-1999
Box 5: 103
Request for Senate Indian Committee Inquiry
2002 Jun
Box 5: 104
"Review of Law and Social Change"
1993
Box 5: 105
Shoshone Tribes' Resolutions
2002 Jun
Box 5: 106
Title Case
2004-2006
Box 5: 107-110
Te-Moak Band 1937 Constitution
ca.1999
Box 6: 1
Te-Moak Tribe of Western Shoshone Documents
1996
Box 6: 2
Te-Moak Tribal Council Court Filing
2009 Nov
Box 6: 3
Tybo, Myron Court Filings
2002
Box 6: 4-6
Ely Shoshone Tribe Request for Action by UN

1999 Aug
Box 6: 7
U.N. Application
1997
Box 6: 8
U.N. Committee On Racial Discrimination
2002
Box 6: 9
Unrepresented Nations and Peoples Organizations
1991-2000
Box 6: 10
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1974
Box 8: 8
United States v. Dann et al. Summery
ca.1980-1989
Box 6: 11
United States v. George Gottshalk
1996
Box 6: 12
United States v. Nye County Clerk Documents
1995-1997
Box 6: 13-14
United States v. Nye County. Clippings
1995-1997
Box 6: 15
United States v. Nye County Documents
1995
Box 6: 16-25
United States v. Nye County Documents
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Box 8: 9
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1996
Box 6: 26-29
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1997
Box 6: 30
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Box 6: 31
United States v. Nye County: Judicial Misconduct
2000-2001
Box 6: 32-33
United States v. Nye County. Docket Sheets
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Box 6: 34
United States v. Nye County: Report on Public Lands
1993 Nov
Box 6: 35
United States v. Raymond Yowell et al.
1992
Box 6: 36
"Welcome to Nevada Indian County"
1997
Box 6: 37
WSNC 10th Annual Fall Gathering
1997
Box 8: 10

WSCN Flow Chart and Statement - Oro Nevada Resources

1996

Box 8: 11

WSNC v. United States & Oro Nevada Resources

1997 Sep

Box 6: 38

WSNC v. United States & Oro Nevada Resources

1997 Mar

Box 6: 39

WSNC v. United States: Court Summons

1997 Apr

Box 6: 40

WSNC v. United States Injunction

1997 Jan

Box 6: 41

WSNC v. United States Injunction

1997 Feb

Box 6: 42

WSNC v. WS Miscellaneous

2008

Box 6: 43

WSNC v United States: Notes for Preliminary Injunction Hearing

1998 Apr

Box 6: 44

WSNC v. United States & Oro Nevada Resources

1997

Box 8: 12

WSNC v. United States & Oro Nevada Resources

1997

Box 6: 45-52

WSNC v. United States & Oro Nevada Resources

1998

Box 6: 53-66

WSNC v. United States & Oro Nevada Resources

1991

Box 6: 67

WSNC v. United States & Oro Nevada Resources

1999

Box 6: 68-69

WSNC v. United States & Oro Nevada Resources

2000

Box 6: 70-73

WSNC v. United States & Oro Nevada Resources Minutes

1997

Box 6: 74

WSNC v. United States & Oro Nevada Resources Minutes

1998

Box 6: 75

WSNC v. United States & Oro Nevada Resources Minutes

1999

Box 6: 76

WSNC Civil Suit

2005

Box 6: 77-84

WSNL: Finding Facts Against the US Government

1998 Jan

Box 6: 85

WSNC: Legal Land Descriptions

2002 May

Box 6: 86
WSNC Minutes
1987
Box 6: 87-88
WSNC Minutes
1996
Box 6: 89
WSNC Minutes
1997
Box 6: 90-91
WSNC Minutes
1998
Box 6: 92
WSNC Notes
1995
Box 6: 93
WSNC Notes
1995
Box 6: 94
WSNC v. Molini Info Packet
1996
Box 6: 95
WSNC Notes
1996
Box 6: 96
WSNC Notes
1997
Box 6: 97-98
WSNC Notes
1998-1999
Box 6: 99
WSNC Op-Ed
2003 Feb
Box 6: 100
WSNC Organizational Statement
1988 Feb
Box 6: 101
WSNC Ordinance - Outdoor Advertising
1996
Box 6: 102
WSNC Resolution of Sovereignty
1995
Box 6: 103
WSNC Secretary of State
1998-1999
Box 6: 104
WSNC Strategies, Position Statements, Resolution
1998
Box 6: 105
Western Shoshone Defense Project
1997
Box 7: 1
Western Shoshone Defense Project: Manumission
ca.1997
Box 7: 2
Western Shoshone Injunction Exhibits
2005 Apr
Box 7: 3-4
Western Shoshone Nation "Chronology of Events 1991- 2002"

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Box 7: 5
Winne Muca Indian Colony v. The United States
2007
Box 7: 6
Wild Horse Management Plan
1999
Box 7: 7
Yowell Civil Case
2002
Box 7: 8
Yowell Notes
2002
Box 7: 9
Yowell, Raymond (audiocassette)
1998 Jul
Box 7: 10
Yowell v. United States
2007
Box 7: 11
Yowell v. United States
2008
Box 7: 12-14
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Box 7: 15-18
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Box 7: 19
Canadian Fisheries Agreement
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Box 8: 13
Clippings
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Box 7: 20
Clippings: Letter to the Editor
1985
Box 7: 21
Clippings
1989
Box 7: 22
Clippings
1995-1999
Box 7: 23-25
Commonwealth v. Hendricks: Criminal Complaint
1997
Box 7: 26
Commonwealth v. Hendricks: Documents
1986
Box 7: 27-29
Commonwealth v. Hendricks: Documents
1987
Box 7: 30
Commonwealth v. Hendricks: Documents
1988
Box 7: 31-33

Commonwealth v. Hendricks: Notes
1983-1985
Box 7: 34
Commonwealth v. Hendricks: Notes
1986
Box 7: 35-36
Commonwealth v. Hendricks: Notes
1988
Box 7: 37
Commonwealth v. Hendricks: Notes
1996-1997
Box 7: 38
Commonwealth v. Hendricks: Research
1986
Box 7: 39
Commonwealth v. Marshall: Arrest Documents
1997
Box 7: 40
Commonwealth v. Marshall: Documents
1997
Box 7: 41-42
Commonwealth v. Marshall: Documents
1998
Box 7: 43
Commonwealth v. Marshall: Documents
1999-2000
Box 7: 44
Commonwealth v. Maxim: By-Law Violation
1995
Box 7: 45-46
Commonwealth v. Maxim: Court Notices
1998
Box 7: 47
Commonwealth v. Maxim: Documents
1996
Box 8: 14
Commonwealth v. Maxim: Documents
1996
Box 7: 48-51
Commonwealth v. Maxim: Documents
1997
Box 7: 52-57
Commonwealth v. Maxim: Documents
1998
Box 7: 58-60
Commonwealth v. Maxim: Notes
1995
Box 7: 61
Commonwealth v. Maxim: Notes
1996
Box 7: 62-63
Commonwealth v. Maxim: Notes
1997
Box 7: 64
Commonwealth v. Maxim: Oral Argument Materials
ca.1998
Box 7: 65
Commonwealth v. Maxim: Research
1995

Box 7: 66
Commonwealth v. Maxim. Research
1996

Box 7: 67
Commonwealth v. Mills. Documents
1984

Box 7: 68-69
Commonwealth v. Mills. Documents
ca.1985

Box 7: 70
Commonwealth v. Mills Document
1986

Box 7: 71-72
Hunting and Fishing Rights Bill: Research Materials
1982

Box 7: 73
Hunting and Fishing Rights Bill: House of Representatives Records
1988

Box 7: 74
Hunting and Fishing Rights Bill: Draft
2002

Box 7: 75
Marshall v. Merrit
2002

Box 7: 76-77
Marshall, Glen Notes
1996-2002

Box 7: 78
Massachusetts Resolution on Aboriginal Claims
1976-1984

Box 7: 79
Mashpee Wampanoag: Deer Hunting
1986-1987

Box 7: 80
Mashpee Wampanoag Tribal Council
1984

Box 7: 81
Research: 18th Century Massachusetts Law
1990

Box 7: 82
Research: History of the State of Maine
ca.1998

Box 7: 83
Research: Hunting and Fishing Laws
1988

Box 7: 84
Research: Marine Life and Wampanoag
1998

Box 7: 85
Research: Mashpee and United States Policy
1997

Box 7: 86
Research: Massachusetts Conservation Laws
ca.1980-1990

Box 7: 87
Research: Massachusetts hunting and Fishing Laws
ca.1980-1990

Box 7: 88
Research: Massachusetts Law

ca.1980-1998
Box 7: 89
Research: Related Court Cases
ca.1980-1990
Box 7: 90-96
Research: Related Court Cases
ca.1980-1990
Box 8: 15-17
Research: Tribal Recognition/Arbitration
1998
Box 7: 97
Research: United States Congress Documents
ca.1980-1990
Box 8: 18
Research: Usufructuary Rights Packet
1988
Box 7: 98
Rhode Island v Hopkins: Documents
ca.1987
Box 7: 99-103
Rhode Island v Hopkins: Documents
1989
Box 7: 104
Rhode Island v Hopkins: Research
1983
Box 7: 105
Rhode Island v Hopkins: Research
ca.1987
Box 7: 106-108
Rhode Island v Hopkins: Research
1989
Box 7: 109
Rhode Island v Hopkins: Research Packet
1987
Box 7: 110-111
Treaties: Wabanaki
1991
Box 7: 112
Treaties: Dummer's Treaty
1993
Box 7: 113
Treaties: Bibliography of Colonial Treaties
ca.1995
Box 7: 114
Treaties: "Treaty with the Eastern Indians at Falmouth 1749"
ca.1998
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