

The Identity of Evidence:
Documentary evidence in the
Federal Acknowledgment Process

by

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Abstract

In the Federal Acknowledgment Process (FAP) indigenous groups submit 1000s of documents as evidence to prove they satisfy seven mandatory acknowledgment criteria established at 25 C.F.R. § 83.7. Despite a broad consensus among those who study federal acknowledgment that documentary evidence is critically important it has never before been studied. This exploratory study provides new insights and new data about the role of documentary evidence in the FAP. Through a synthetic review I identify the main factors attracting prior research attention and believed to influence outcomes. I analyze metadata for more 126,000 documents submitted by 11 of the 44 petitioners receiving a final determination. Unsuccessful petitioners on average submit more documentary evidence per member, more from federal sources, more letters, more federal letters and more tribal letters. This analysis points toward explanations of petition failure focused on documentary absences more than resource deficits. Successful petitioners enjoy a disproportionate share only of letters from pan-Indian legal organizations and members of congress. Using qualitative and quantitative methods I also analyze 62 *Technical Assistance (TA)* letters sent to 42 of the 44 petitioners by OFA staff communicating perceived weaknesses in documentary evidence years before a final determination. I describe differences in the evaluation of documentary evidence by future outcome, show which criteria are most vexing in relation to documentary evidence, extract vocabularies characterizing *TA* letters, and report the results of a Multiple Correspondence Analysis (MCA) of a number of key documentary and other acknowledgment factors. My analysis of *TA* letters suggests that only the criteria reliant on the perceptions and documentation of non-Indians predict outcomes and that success is more difficult now than in the past and appears influenced by geography.

CHAPTER 1: Documentary evidence and federal acknowledgment

How are documents used as evidence? That question is at the heart of this exploratory study of documentary evidence in the Federal Acknowledgment Process (FAP). Promulgated in 1978 and now defined at 25 C.F.R. § 83 the FAP is an administrative proceeding to determine whether a petitioning tribal group merits status as a sovereign tribal nation under federal law. The Bureau of Indian Affairs estimates there are more than 150 unrecognized indigenous nations and more than 300 distinct groups have pursued acknowledgment through the FAP (Cramer 2005:131, US Dept. of Interior 2008).

Petitioners must prove they meet seven mandatory acknowledgment criteria following procedures established at 25 CFR § 83.7 and implemented by the Office of Federal Acknowledgment (OFA).¹ Petitioners must provide “quantifiable and certifiable evidentiary data in the form of written records recording vital

1. The Office of Federal Acknowledgment is the successor to the Acknowledgment and Research Branch (ARB) and the Branch of Acknowledgment Research (BAR). The OFA was also made an independent agency within the Department of the Interior and removed from the Bureau of Indian Affairs, at least as a matter of administrative law.

statistics, family genealogies, tax and probate records, and an aggregate of similar data” (Gonzales 2006: 59). After nearly four decades and hundreds of petitioners a final status determination has been reached in only 44 cases as of 2011 and only 16 tribes have achieved federal acknowledgment this way.

Regardless of outcome each FAP petitioner assumes an enormous documentary burden. On average it takes about 16 years before a final determination is received and the cumulative costs of petition preparation routinely exceed \$1 million. Petitioners must locate, identify, acquire, organize, represent, and defend their use of a large number of different types of documents as evidence they satisfy the acknowledgement criteria. Evaluating the documentary evidence is a small team of about nine academically-trained OFA historians, anthropologists, and genealogists. Working on individual petitions in teams of three, OFA staff members make recommendations for or against acknowledgment to the Assistant Secretary of the Interior for Indian Affairs (AS-IA).²

Documentary evidence is enormously important in federal acknowledgment. Professor of Law Patty Ferguson-Bohnee, formerly a consultant to the OFA, argued before the Senate Committee on Indian Affairs in 2008 that an imposing evidentiary burden coupled with the lack of resources can result in a

2. OFA publishes a list of staff and credentials: <http://www.bia.gov/cs/groups/public/documents/text/idc009020.pdf> [Accessed 15 June 2014].

denial of acknowledgment less for failure to meet requirements “but by its inability to produce the required documentation and analysis” (Ferguson-Bohnee 2008). Many scholars whose work I review in Chapter 2, and some petitioners, believe the FAP imposes unrealistic burdens on petitioners and fails to adequately address diverse tribal realities and the legacies of federal policy. Mark Miller at the University of Southern Utah, for example, argues that petitioners face a debilitating *Catch-22*:

At the crux of the problem for most unacknowledged groups is the fact that the state-like unit with political power and retained aboriginal sovereignty is clearly the easiest to see, yet the hardest to maintain. The intangible component of a people or ‘nation’, on the other hand, is the most enduring and the simplest to maintain, yet also the hardest to see and quantify. Overall, the ephemeral nature of groups and identities has served to confuse and confound attempts at measuring them. As with many meaningful aspects of collective identity and culture hidden within clandestine social spaces and moments, problems arise when evaluators insist upon written documentation to ‘prove’ tribal political functioning” (Miller 2004).

Miller’s use of the phrase “easiest to see” refers to petitioner attributes that made them subjects of documentary evidence. The “level of archival research and documentation” confronting petitioners is enormous and “requires a rather high proportion of investigation into primary documents” (Quinn 1988:75) a burden made more difficult by the very history producing the need. FAP petitioners are less likely to have been the focus of documentation efforts by others and in many cases they are less likely to have been capable of generating the kind and volume of documentary evidence required under the FAP (e.g., Miller 2003, Miller 2004).

Supporters of the current process, including OFA staff members and many recognized tribes, justify the documentary burden as necessary to ensure that only those petitioners that merit tribal status under federal law are acknowledged. Critics and supporters of the FAP agree that documentary evidence plays a central role in the FAP but until this study that role has never before been systematically analyzed. Assembling and using documentary evidence entails attempting to understand the criteria, interpret the evidential value of documents, and then organizing and representing the documentary evidence to support a petition narrative. Petitioners must sustain these efforts over a long period and at great cost. The use of documentary evidence in the FAP is intriguing because of its centrality to the process, because of the importance of documentary evidence in Indian law and policy generally and because of the unique challenges of organizing, defending, and assessing the evidentiary value of documents.

1.1 The Federal Acknowledgment Process (25 C.F.R. § 83)

Federal acknowledgment in its present form arose most immediately out of the indigenous activism of the 1960s and 1970s. One congressional response to that activism was the creation of the American Indian Policy Review Committee whose final report recommended a more standardized acknowledgment procedure after canvassing many areas of the country with large American Indian populations

(Committee 1977). Against a backdrop of rising indigenous activism, a dramatic increase in the number of tribes seeking recognition, and congressional threats to their authority, the BIA moved preemptively in 1978 to rationalize acknowledgment by promulgating 25 C.F.R. § 83 and the FAP was born.

Petitions for acknowledgment were evaluated by the newly-formed Branch of Federal Acknowledgment within the BIA, later renamed the Branch of Acknowledgment and Research and by the late 1980s the Acknowledgment and Research Branch. The Office of Federal Acknowledgment (OFA) was created in 2003 as an independent office reporting directly to the Assistant Secretary-Indian Affairs (AS-IA). Some tribes achieve acknowledgment through acts Congress but nearly all groups seeking and achieving federal acknowledgment now do so through the FAP procedures and criteria established at 25 C.F.R. § 83.

1.2 Mandatory acknowledgment criteria

Acknowledgment regulations stipulate that petitioners must satisfy all seven of the mandatory criteria listed in Table 1. The persons writing the new acknowledgment regulations in 1978 adapted historical, anthropological and genealogical factors from Supreme Court precedent and the legal and ethno-

historical factors comprising the Cohen criteria³ for identifying eligibility for certain tribal rights under the IRA (Quinn 1990). A petitioner satisfies a FAP criterion if the “available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion” (Fleming 2005:2).

Table 1: Mandatory acknowledgment criteria under 25 C.F.R. 83.7

The petitioner must prove or provide that:	
(a)	“identified as an American Indian entity on a substantially continuous basis since 1900.”*
(b)	“predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.”
(c)	it has “maintained political influence or authority over its members as an autonomous entity from historical times until the present.”
(d)	“copy of the group’s present governing document including its membership criteria.”
(e)	its membership “consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.”
(f)	membership is “composed principally of persons who are not members of any acknowledged North American Indian tribe.”
(g)	“[n]either the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship”

3. Many Supreme Court cases use the term ‘recognition’ or ‘recognized tribe’. The controlling opinion is generally identified as *Montoya v. United States* (280 U.S. 261) (1901) which states: “By a ‘tribe’ we understand a body of Indians of the same or a similar race, united in a community under one leadership or government, inhabiting a particular though sometimes ill-defined territory” (280 U.S. 261 at 266). The Cohen criteria were articulated by Felix Cohen, the leading figure in American Indian jurisprudence and author of *Handbook of Federal Indian Law*.

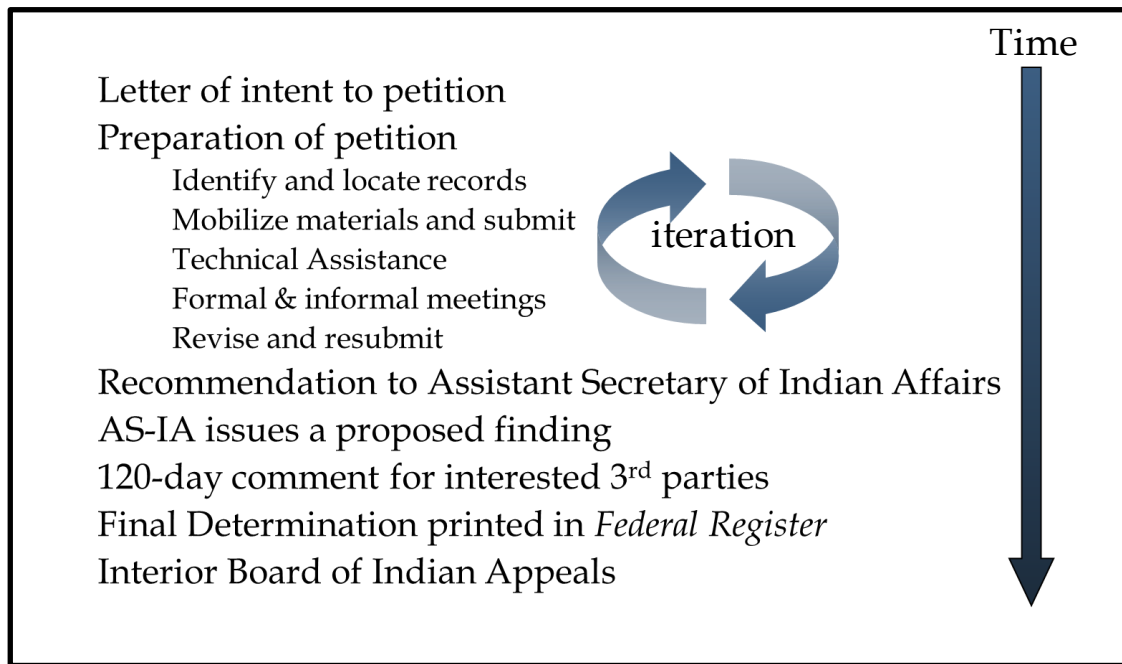
Despite minor changes imposed by Congress in 1988, 1994 and 2000, the FAP and the acknowledgment criteria have remained remarkably stable over the decades with some important exceptions. Interpretations are congealed in a *Precedent Manual* to which petitioners have access and that illustrates the meaning of the criteria by reference to examples, including guidance about which kinds of documentary evidence are useful.

If the criteria themselves changed little over the past 35 years many believe that much more documentary evidence is now required. In her senate testimony, Pointe-au-Chien member, states there is a broad consensus the required volume of documentary evidence has increased greatly (Ferguson-Bohnee 2008). Ferguson-Bohnee does not indicate how she reached this conclusion but as a private attorney then working with tribes on federal acknowledgment, she is well-positioned to appreciate the consensus view.

The stages of the FAP are depicted in Figure 1. The darker arrow along the right side represents the sequencing from the first stage of a letter of intent through the last stage, the publication of a final determination in the *Federal Register* with the potential for an appeal. The lengthiest phase is the preparation and revision phase before a petitioner agrees to active consideration. In Figure 1 the elements of this preparatory stage appear next to the two blue circular arrows reflecting the iterative nature of this stage. Petitioners locate documents, collect oral histories, produce current and historical maps, scour county and state

archives, gather materials that are often disbursed among tribal members or located in tribal archives, and search historical societies, university archives, religious archives, and any one of many federal archives. A petition narrative, exhibits, and supporting documentary evidence are closely reviewed by the OFA staff before issuing one or more *Technical Assistance* (TA) letters. Once called a Letter of Obvious Deficiency, a *TA* letter describes the evidentiary weaknesses of a petition and often includes requests for additional documentation, either referencing specific sources or types of sources.

Figure 1: Stages of the Federal Acknowledgment Process (FAP)



When a petitioner requests that their petition be placed on active consideration, the OFA staff again evaluates the petition and documentary

evidence and produces a *Proposed Finding* in which they make a recommendation for or against acknowledgment published. Third parties such as politicians, other tribes, and members of local communities, are invited to comment during a four-month period. Deviating from the OFA staff recommendations only once, the AS-IA then publishes a final determination in the *Federal Register* that is binding unless reversed on appeal by the Department of Interior's Board of Indian Appeals.

The foregoing description of acknowledgment focuses intentionally on particular institutional processes related to *the* Federal Acknowledgment Process established at 25 CFR 83. It affects a view of an administrative process mediated through a focus on documentary evidence and not a broader framing of federal acknowledgment designed to capture all the rich phenomena and experiences others examine in their research.

1.3 A study of documentary evidence in federal acknowledgment

The acknowledgment process attracts significant interest from scholars from a range of disciplines. Scholars identify such factors as geography, group size, and degree of political centralization, among other factors, to explain petition outcomes. In Chapter 2, I describe their findings to situate the current study within the broader acknowledgment research context but I report no analyses that

support or challenge these findings definitively.⁴ Instead, I analyze the kinds of documentary evidence used by petitioners and how OFA staff evaluates that evidence.

1.4 Research questions

Federal acknowledgement privileges textual evidence over other potential forms of evidence. Some acknowledgment regulations explicitly require documentary evidence and in the aggregate enormous volumes of documentary evidence are submitted by petitioners and evaluated by the OFA staff. Do successful petitioners submit different kinds of documentary evidence? As a process designed to distinguish worthy petitioners on the strength of documentary evidence I anticipate that differences exist in the documentary evidence submitted by successful and unsuccessful petitioners. Two fundamental research questions organize this study:

- 1 Is the documentary evidence of successful petitioners different from that of unsuccessful petitioners?**
- 2 Do OFA professionals perceive the evidence of successful petitioners differently?**

4. Omitted from the current research for purposes of intellectual clarity is a series of findings by the author that none of the various factors reviewed in Chapter 2, carefully operationalized, was a statistically significant predictor of acknowledgment outcome.

The first research question asks whether differences exist in the quantity and types of documents submitted by successful and unsuccessful petitioners. Answering this question is the primary focus of Chapter 3 where I analyze metadata about 126,062 documents submitted as evidence by 11 petitioners. I find somewhat surprising differences in the documentary evidence they submit.

The second research question is answered in Chapter 4 where I combine both qualitative and quantitative techniques to analyze the content of 62 documents called *Technical Assistance (TA)* letters prepared by the OFA staff to communicate their provisional analyses of documentary evidence. I also identify significant content differences in the two groups of *TA* letters. Finally, through the use of Multiple Correspondence Analysis (MCA) I provide a revealing geometric representation of documentary and other factors in the FAP. As an exploratory tool, the MCA provides a view of which variables and petitioners are more similar and which correlate with outcomes, charting future research possibilities.

Both research questions take advantage of the fact that the FAP presents a classic natural experiment given a binary outcome.

1.5 The value of exploratory research

The three primary purposes of social scientific research according to Babbie (2007) are exploration, description, and explanation. Exploratory research is most

appropriate when the problems of research interest are poorly understood and where data are hard to acquire (Babbie 2007). The use and interpretation of documentary evidence in the FAP is such a case.

This is not a comprehensive study of acknowledgment. It is instead a modest exploratory study of the role and importance of documentary evidence in the FAP. Despite widespread appreciation by scholars that evaluating documentary evidence is a defining feature of the FAP it has never before been the object of empirical investigation. While an important start, however, this study is not an exhaustive account of the role of documentary evidence in the FAP because of data access and other limitations described in Chapter 5.

This study *is* a very substantial improvement in our understanding of the role of documentary evidence in FAP outcomes. Anthropologist William Starna (1992: 134) observes that very little is known about how OFA staff interpret documentary evidence, adding that the “reasons behind decisions by the BAR [OFA] and its public ethno-historians, and the means by which they are reached are, for the most part, unknown and unknowable”. My research establishes that at least some of their interpretations are partially knowable.

As a scholar and human being I am moved by the agonizing historical experiences many FAP petitioners and other indigenous nations have faced in the past and that many face today. Through conversations with members of different indigenous communities and through research and conversations with colleagues

I have become more aware of some of the reasons indigenous peoples all over the world experience “the archive” in profoundly negative terms, experiences defined by painful omissions, biases, and the discomfort of a life lived under an imperial gaze (Anemaat 1989, Cooper 2003, Fourmile 1989, Galloway 2006, Millar 2006). For many indigenous nations their experiences with legal systems are even worse and many believe quite reasonably that records and recordkeeping have played a considerable role in their legal subjugation (Robertson 2005, Williams 1990).

A recurring theme identified by archivists working with indigenous communities is the exclusionary and alien nature of records that were created, kept, and used by institutions deeply implicated in the conquest and subjugation of indigenous populations (Churchill 1993, National Archives Conference on Research in the History of Indian-White Relations 1976, Russell 1984-85, Russell 2006). The documents that dominate in the FAP are often located in archival repositories and many of the documents used as evidence are archival records. Those records will determine the future of the group.

Not all exploratory research is equally valuable. Research problems inviting an exploratory approach should be well-chosen so the benefits of exploration are most fully-realized. Exploratory research should not be entirely theory-free or uniformed by existing research. The very best exploratory research is more than merely descriptive. Exploratory data analysis should be transparent, energized by an appreciation of the existing state of knowledge, and an informed assessment of

the primary issues worthy of research attention. The very best exploratory research elevates the quality and increases the availability of new data about the relevant problems under study. Synthesizing existing research, operationalizing for potential causal factors in a transparent way, and carefully producing new datasets are disproportionately valuable contributions in the context of exploratory research. This study makes contributions across all these various fronts. One of my goals is to tell a story about documentary evidence in federal acknowledgment, a story that is at once interesting, provocative, and novel, both substantively and methodologically.

This project began with a deep interest in how petitioners organize and represent documentary evidence. I intended to couple analyses of their experience to analyses of documentary evidence and its interpretation by the OFA staff. I completed a study focused entirely on the latter interest. With a narrowing of focus came the selection of methods most appropriate to the tasks of analyzing documents and documentary evidence. Instead of a comprehensive account of the 'documentary experience in acknowledgment' this study places a few important markers on the research landscape. In particular, I provide a measured view of the documentary evidence submitted by a sample of petitioners and systematically explore the content of *TA* letters created by the OFA for all petitioners and that communicate their evaluations of documentary evidence.

CHAPTER 2: The Federal Acknowledgment Process (25 CFR § 83)

In his global history of indigenous petitions for recognition York University Professor Ravindra De Costa argues that by their very nature petitions always involve articulating identity and authority within a context of “implicit descriptions of the moral worlds in which particular claims are sensible and legitimate” (Costa 2006:670). He also describes how petitioning mechanisms are sometimes exploited by indigenous communities as sites of struggle laden with the “rich production of new meanings and identities,” though they often fail (Costa 2006:694). In the American context, the global dynamic De Costa describes is concentrated in the FAP where agents of the federal government decide whether it will recognize particular indigenous communities.

In this chapter I review the historical underpinnings of the current acknowledgment process and explain why so many tribes lack recognition and why so many find the FAP such a challenge. I closely examine the existing

acknowledgment literature and identify a range of factors others offer to explain outcomes. My synthetic review helps situate the current work in the broader acknowledgment research context.

Many FAP petitioners believe they are required to “fit a definition of their own identity constructed of European stereotypes of race, tribe, and nation” (Perry 1995:573).” Echoing this critique, anthropologist Les Field, who worked with several California petitioners, eviscerates the FAP and OFA for adopting “some of the most egregious and rigid essentialist discourse anthropology has ever produced” (Field 2003:195). These statements lie at the rhetorical extremes but they capture the flavor of most of the existing research on acknowledgment. Mark Miller, one of the more prolific acknowledgment scholars, admits he believes some FAP decisions have merit, but that it generally is reliant on “rigid precedents, written documentation, and evidence of anachronistic indigenous survivals” that is used to deny petitions of merit and has over time become “more legalistic and adversarial” (Miller 2001).

A sharper understanding of why petitioners fail is important because failure is essentially irreversible and unsuccessful petitioners are likely to dissolve as distinct communities. Only federally-recognized tribes exercise sovereignty over their affairs and they alone enjoy immunity from legal and regulatory encroachment by states, often the “deadliest enemies” of tribes (*United States v. Kagama*, 118 U.S. 375, 1886). Mather characterizes the three primary advantages

secured through federal acknowledgment: (1) limited sovereignty and authority over members; (2) eligibility for a range of important federal services or benefits; and (3) the prestige and honor accorded to recognized tribes by other tribes and the public (Mather 2003).

2.1.0 A short history of acknowledgment before the FAP

Former OFA ethno-historian William Quinn (1988, 1990) traces the origins of the reigning conception of federal acknowledgment to social, economic, legal, and political changes in the relations of the United States and indigenous nations over time. Through the first half of the 19th century, he argues, two conceptions of acknowledgment or recognition co-existed. The dominant conception equated recognition to awareness or cognizance of indigenous nations. This conception of is reflected in the political and economic realities motivating treaty-making and accommodation with the many indigenous communities encountered first by colonies and later by the government and states of the young American republic. Recognition in these encounters reflected the reality of the circumstances and the need for practical accommodation.

Concurrent with cognitive view there was a 'jurisdictional' conception of acknowledgment ensconced at first in the judiciary with origins in a series of seminal Supreme Court decisions. As Quinn describes, the jurisdictional view

represents a thinner, more prescriptive, and unilateral kind of encounter, one focused on an asymmetric determination of a specific set of defined federal obligations to an indigenous entity (Quinn 1990).

Between the *Suspension of Treaty-making Act* (1871) and the opinion in *US v. Sandoval* (1913) the jurisdictional view came to dominate all three branches of government. The *Sandoval* court opined that whether some group was “distinctly Indian” was a function of “whether and for how long they shall be recognized as requiring protection of the United States,” a determination made by Congress (231 U.S. 28 at 29). By the end of the 19th century deep questions about who was an Indian and what was a tribe were increasingly answered unilaterally by the federal government (Quinn 1990).

As the jurisdictional perspective ascended and consolidated in the early 20th century it became obvious that neither conquest nor assimilations adequately addressed what was called the “Indian problem”. A new era in arrived with the 1928 *Merriam Report* and its progeny, the “New Deal” for American Indians, represented by the 1934 Indian Reorganization Act. Under the IRA and legislation developed under its aegis, the federal government alone determines whether a tribe is recognized. Excepting a brief resurgence of the assimilationist ethos during the termination era of the 1950s and 1960s focused in some regions, the IRA model increasingly came to define all of federal Indian policy and continues to fundamentally shape the modern acknowledgment process. The historical changes

from policies of trade and violence to assimilation to IRA governance were accompanied by increasingly unilateral federal determinations of status.

2.2.0 The historical geography of acknowledgment

How did so many tribes find themselves unrecognized by the federal government? The answers vary greatly by tribe, region, historical period, and policy priorities. The historical geography of acknowledgment is provided in the map of the United States in Figure 2 showing the locations of the 44 petitioners receiving a final determination and the total number of petitioners in each state.⁵ It reveals four geographic concentrations: Southern New England, the Deep South, Michigan, and the West Coast, especially the Pacific Northwest. A variety of historical factors, often layered over each other, explains why the BIA estimates there are as many as 150 unrecognized tribes.

Nations east of the Mississippi, especially in the north never negotiated treaties before the 1871 suspension of treaty-making. Nations in the Upper Midwest, the South, and the East with the earliest European contact often experienced demographic collapse, political disintegration, forced assimilation or migration, and in some cases a complete loss of traditional territories, especially in coastal New England. Indigenous nations collapsing before 1787 were easier and

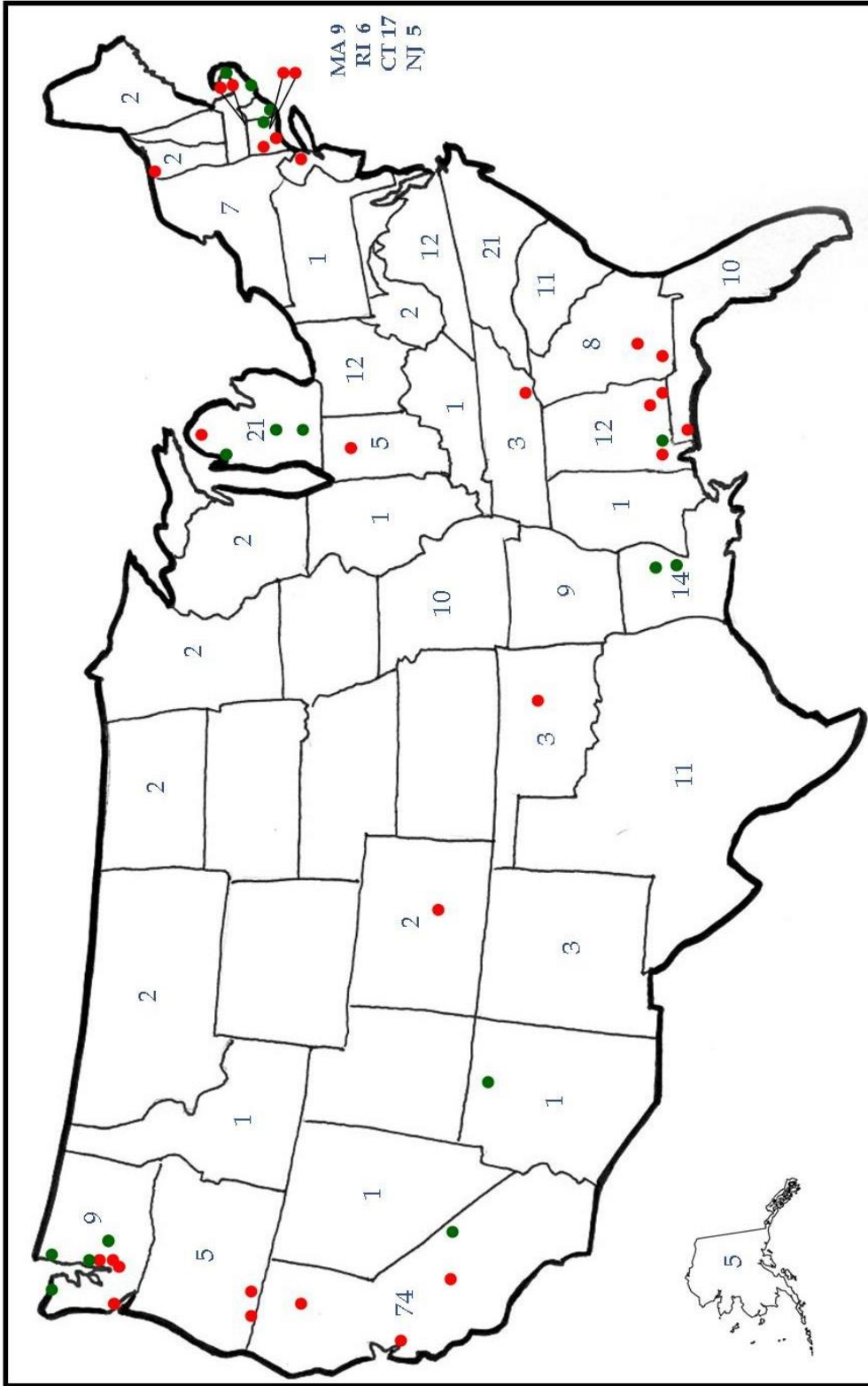
5. Six petitioners have received status decisions since 2011 but are in litigation and cannot be considered final as they are in litigation or only recently settled. Further, the OFA Acknowledgment Decision Compilation is not publicly available as of late July 2014.

convenient for national and state governments to ignore in the early years of federal Indian policy (Miller 2004). One consequence of this lack of attention, of course, is that they were not likely to be parties to formal diplomacy and its attendant documentation. They were also far more vulnerable to continued encroachment or dispersion and social and political pressures.

From the revolutionary era through the years immediately following ratification of the constitution, the powerful Six Nations Confederacy and allied tribes along the Appalachian Ridge were major partners in trade as well as skirmishes with settlers and were therefore much more likely to enter into treaties or trade agreements with rebelling colonies and later the states and the federal government (Shannon 2008, White 1991). Such nations are therefore far more likely to appear as traces in early federal records. In the early 1800s in the territories of the Northwest Ordinance (1790), the region known as the Great Lake states the nations of the Anishinabé people treated and traded with the French, British, and Americans in addition to maintaining long-standing diplomatic and trade relations with other indigenous nations (White 1991).

A history of such documented interactions is no guarantee of federal recognition however. In the Pacific Northwest, for example dozens of nations signed treaties with federal agents in the mid-19th century that were never subsequently ratified by the US Senate.

Figure 2: Geography of Federal Acknowledgment



Considered not binding by the federal government, indigenous signatories realized none of the intended protections from treating and faced incursions, dislocation, disruption, and various other challenges that made keeping records difficult and creating a substantial incentive for local and federal authorities to continue to “ignore” such groups. This description applies to dozens of nations in the Pacific Northwest.

Other nations enjoyed longstanding diplomatic or trade relations with non-American powers such as the French, English, Spanish, Mexicans, and Russians, but difficulties in “collecting, translating and resolving” such agreements resulted in many being ignored (Committee 1977:464). The United States became the ‘successor in interest’ to agreements when European powers transferred their interests to the United States but often neglected to abide by the earlier agreements. This was particularly true where the US obtained land in the Southwest and California in agreements ending the Mexican-American War (Miller 2003). Tribes straddling international borders have also been overlooked because they failed to fit neatly into existing Euro-American jurisdictional arrangements.

Nations east of the Mississippi surviving into the early 19th century were more likely to have endured or adopted new political structures, territories, land practices, or may have accommodated degrees of assimilation as survival strategies. The strategies included intermarriage and identification with non-

Indians or the adoption of new languages, religions, dress, and other cultural practices. Some communities “reverted to the family as their basic unit of social organization” instead of the more obviously political configurations that may have prevailed prior to adopting opacity as a survival strategy (Miller 2004).

Members of the Five Civilized Tribes attempted survival through assimilation they were nonetheless removed from the South during the Trail of Tears in the 1830s. So-called ‘remnant tribes’ who avoided the forced march attempted to render themselves invisible to outsiders. They retreated to marginal lands as far as possible from population and political centers. Other groups attempted to dissolve into surrounding populations, at least for purposes of external representations.

Other tribes were simply not documented at all. Notable examples include policies inspired by eugenicists to limit the number of local Indians by classifying them as Mexicans or black Americans for census purposes. Assistant Commissioner for Indian Affairs E.B. Merritt, for instance, instructed Sacramento Superintendent L.A. Dorrington in the 1920s to prepare a report that through such means unilaterally “terminated the rights of 135 other previously recognized tribal bands” (Field 2003:87). During the New Deal era, the BIA failed to properly account for documents or overlooked particular groups, such as the Burt Lake Band of the Chippewa Indians in Michigan.

Petition failure is essentially irreversible and unsuccessful petitioners are likely to dissolve as distinct communities over time. Only federally-recognized tribes exercise sovereignty over their affairs and they alone generally enjoy immunity from legal and regulatory encroachment by the states.

The 44 petitioners I analyze in this study are listed in Table 2 and identified by the tribal name appearing in petition documentation. The Size column in Table 2 refers to the number of individuals named as members in the petition, the Begin column is the year a letter of intent to petition was submitted, and the End column is the year a final determination was declared.

2.3.0 Influential factors in existing acknowledgment research

In this section, I synthesize the existing literature to identify the primary factors believed to influence outcomes. With few exceptions these claims have not been tested systematically by those making them. Factors I have identified include community wealth, population size or membership, community cohesion, geography, petition timing, political resource availability (and the capacity to exploit them), racial or ethnic hybridity, in particular high rates of intermarriage with African-Americans, and perceptions about tribal gaming. My selective review underscores the distinctiveness of my approach methodologically and in my focus on documentary evidence.

Table 2: Petitioners by state, population, timing, and outcome

PETITIONER	STATE	POP	BEGIN	END	OUTCOME
Poarch Band of Creeks	AL	1470	1975	1984	ACK
Principal Creek Indian Nation	AL	324	1971	1985	DEN
MaChis Lower AL Creek Indian Tribe	AL	284	1983	1988	DEN
MOWA Band of Choctaw	AL	3960	1983	1999	DEN
San Juan Southern Paiute Tribe	AZ	192	1980	1990	ACK
Death Valley Timbi-Sha Shoshone Band	CA	199	1979	1983	ACK
Kaweah Indian Nation	CA	1204	1980	1985	DEN
United Lumbee Nation of NC and America	CA	2000	1980	1985	DEN
Muwekma Ohlone Tribe of San Francisco Bay	CA	400	1989	2002	DEN
Munsee-Thames River Delaware	CO	34	1977	1983	DEN
Mohegan Tribe of Indians of the State of Connecticut	CT	1032	1978	1994	ACK
Golden Hill Paugussett Tribe	CT	216	1982	2005	DEN
Eastern Pequot Indians of Connecticut	CT	647	1978	2005	DEN
Paucatuck Eastern Pequot Indians of Connecticut	CT	128	1989	2005	DEN
Schaghticoke Tribal Nation	CT	317	1981	2005	DEN
Creeks East of the Mississippi, FL	FL	1386	1973	1981	DEN
Lower Muskogee Creek Tribe-East of the MS	GA	1041	1972	1981	DEN
Southeastern Cherokee Confederacy (SECC)	GA	823	1978	1985	DEN
Miami Nation of Indians of IN Inc.	IN	4381	1980	1992	DEN
Tunica-Biloxi Indian Tribe	LA	200	1978	1981	ACK
Jena Band of Choctaws	LA	153	1979	1995	ACK
Wampanoag Tribal Council of Gay Head	MA	461	1981	1987	ACK
Mashpee Wampanoag	MA	1462	1975	2007	ACK
Nipmuc Nation (Hassanamisco Band)	MA	1602	1980	2008	DEN
Webster/Dudley Band of Chaubunagungamaug	MA	212	1980	2008	DEN
Grand Traverse Band of Ottawa & Chippewa	MI	297	1935	1980	ACK
Huron Potawatomi Inc.	MI	819	1972	1996	ACK
Match-E-Be-Nash-She-Wish Band of Pottawatomi	MI	126	1992	1999	ACK
Burt Lake Band of Ottawa and Chippewa Indians Inc.	MI	858	1985	2007	DEN
Ramapough Mountain Indians Inc.	NJ	2693	1979	1998	DEN
Yuchi Tribal Organization	OK	165	1990	2000	DEN
Northwest Cherokee Wolf Band (SECC)	OR	609	1978	1985	DEN
Tchinouk Indians	OR	304	1979	1986	DEN
Narragansett Indian Tribe	RI	1170	1979	1983	ACK
Red Clay Inter-tribal Indian Band (SECC)	TN	87	1978	1985	DEN
St. Francis.Sokoki Band of Abenakis of Vermont	VT	1171	1980	2007	DEN
Jamestown Clallam Tribe	WA	175	1976	1981	ACK
Samish Tribe of Indians	WA	590	1975	1996	ACK
Snoqualmie Indian Tribe	WA	313	1976	1999	ACK
Cowlitz Tribe of Indians	WA	330	1975	2002	ACK
Duwamish Indian Tribe	WA	390	1977	2002	DEN
Chinook Indian Tribe.Chinook Nation	WA	1566	1979	2002	DEN
Snohomish Tribe of Indians	WA	836	1975	2004	DEN
Steilacoom Tribe	WA	612	1974	2008	DEN

2.3.1 Tribal Gaming

When the Indian Gaming Regulatory Act (PL 100-497, 25 U.S.C. § 2701 *et seq.*) was passed in 1988 there were 100 high-stakes Indian bingo halls and card rooms in the United States. Twenty years later there were at least 440 tribal casino operated by 237 tribes in 28 states (Rand 2010:100). Annual revenues increased more than a hundred-fold to more than \$26 billion by 2007, an annual compounded growth rate of 26% per year (Spilde and Taylor 2010). One careful study found that gaming tribes did better economically than non-gaming tribes in “all but 2 of 14 measures of economic conditions” (Marks and Kate Spilde-Contreras 2007, Taylor and Kalt 2005).

Gaming is now a “constitutive element” of federal acknowledgment (Cramer 2001). Newly-affluent gaming tribes have the resources to either promote or impede others’ petitions (Collins 2010, Marks and Kate Spilde-Contreras 2007, Taylor and Kalt 2005, Toensing 2010). Since the passage of the IGRA, financing petitions with the assistance of non-Indians has become possible in a way not true in the first decade of the FAP (Cramer 2001).

Gaming shapes the FAP as well in that the growing backlash against Indian gaming is spilling over into broad “anti-acknowledgment sentiments” (Cramer 2005). North Dakota School of Law Dean Kathryn Rand argues that the even if a petitioner is “not motivated by gaming, outsiders will think it is” (Rand 2010)

meaning that anti-gaming attitudes in the general population are easily mobilized against acknowledgment efforts. Concerns about tribal gaming include fears of crime and drug use, resentments arising from (mis)perceptions about sudden riches, fears that new tribal facilities will undermine local businesses or that tribes will buy up available land, shutting out non-Indians and removing properties from tax rolls (Cramer 2001). Whatever the basis for opposition, Cramer concludes,

Beyond the pecuniary effects of gaming on resources, though, is the more insidious phenomenon—the tendency of the non-Indian public to conflate acknowledgment with gaming, and to transfer their misperceptions about gaming and casino operations onto the hopes of groups who seek federal recognition. Misperceptions about gaming become misperceptions of acknowledgment (Cramer 2001:600).

2.3.2 Political resources

Some researchers identify political experience and the ability to mobilize political resources as influencing success. Cramer (2001, 2005), Mark Miller (2001, 2005), and McCullough and Wilkins (1995) all examine the importance of political resources. I have identified three types of political resources examined in the literature, though clearly they overlap in many actual cases.

One is the presence of *effective tribal leadership*. Mark Miller found that the quality of internal leadership was an important factor in the successful petition of the Timbisha Shoshone while Cramer operationalized “strong leadership” as the absence of factionalism and the presence of “continuous, charismatic, and

disciplined leadership since 1932,” finding it significantly correlated with outcomes (Cramer 2001:100, Miller 2001).

Another type of political resource examined in the literature is the presence of a *cohesive internal tribal identity*. McCullough and Wilkins, for instance, point to social cohesiveness, specifically the existence of a “well-defined [internal] social image” as an important factor in petition outcomes (McCullough and Wilkins 1995:369). The ability to *mobilize political allies* is also believed to influence outcomes. Political power appears important, for instance, in the reversal of the final determination for the Shinnecock Indian Nation and in the fierce opposition to Lumbee recognition by the powerful Eastern Band of the Cherokee in North Carolina.

Cramer attempted to gauge the importance of both external Indian political support and external non-Indian support. She found that the former, operationalized as ‘inter-tribal ties’ and measured by the level of participation in pan-Indian organizations and the absence of opposition by recognized tribes, was very strongly correlated with petition success (Cramer 2001).

The support of powerful non-Indian political leaders such as congresspersons, governors, and mayors, may help to open some doors and keep others from closing. Cramer found that substantial non-Indian political support was correlated with successful acknowledgment outcomes. She defines non-Indian political support as the presence of third party briefs or public statements

of support from legislators, politicians, and organizations such as the NAACP or the Friends Service Committee (Cramer 2001). Cramer found such statements in news media accounts.

2.3.3 Economic resources

Petitioners are typically among the very poorest persons in America and generally fare much worse than members of recognized tribes. Under most circumstances, petitioners are comprised of “poor people of color living in individual (not reservation) settlements, in primarily rural areas, with few tribal resources at their disposal” (Cramer 2001:100). Groups with fewer economic resources would, *ceretis paribus*, tend to struggle to obtain the required documents and organize and execute a viable acknowledgment effort over more than a decade and costing in excess of \$1 million.

Cramer (2001) operationalized for the presence of adequate financial resources when she could find reliable “journalistic, scholarly, or tribal documentation” that groups possessed at least \$100,000. She found resources did help predict outcomes. By contrast, and contrary to their hypotheses, McCullough and Wilkins (1995) found that the successful Catawba lacked resources while the large size and collective wealth of the Lumbee undercut their case for acknowledgment. Cramer (2001) found that the availability of *effective legal resources* was “exceedingly important” for successful petitioners. Tribes enjoyed

substantial legal resources if the group was represented by a firm or firms responsible for prior legal victories. Retaining such firms in most instances requires significant resources.

2.3.4 Population

Researchers give a number of reasons the size of the petitioning group can affect petition outcomes. Cramer (2001) hypothesized, for instance, that a smaller membership, (50% or less of the average size of all petitioners) make success more likely but she found no significant relationship between outcome and group size. McCullough and Wilkins (1995) argue the size of the Lumbee made demonstrating social distinctiveness and political cohesion more difficult and acknowledgment less likely.

2.3.5 Petition timing

McCullough and Wilkins (2005) argue that the “time period in which recognition is sought” will influence petition outcomes because both the external perceptions about tribes and petitioners change over time. The ability of petitioners to conform to changing perceptions may also vary over time. Cramer (2001:117) argues the FAP experience has changed because of evolving race and class discourses: “What it meant to go through BAR in 1981 is incredibly different from what it means to go through BAR in 2001”. No author makes specific claims about outcomes, for

instance, that success is more or less likely in early years. Mark Miller (2001) does imply that over time the process has become far more burdensome as it has grown increasingly legalistic and adversarial, a view others share. Unsurprisingly 1980 saw the largest number of new petitions, months after the opportunity became available, while the largest number of final determinations came in 1985. It takes on average just over 16 years from a letter of intent to a final determination. Successful petitioners on average take 15 years and unsuccessful petitioners 16.2 years.

2.3.6 Geography

Many acknowledgment scholars argue that the prevailing conception of tribal identity among non-Indians is heavily informed by encounters with indigenous nations in the West, in particular the Plains and Great Basin tribes of the Southwest. Relative to other regions of the country, many of the nations in these regions existed as relatively distinct communities with large territories governed through centralized political authorities. American Indian scholars have documented the pervasiveness in our culture of images, often inaccurate or misunderstood, of American Indians are drawn from certain "Great Plains Indians" (Churchill 1992). John Wayne never waged war against a fishing village in the San Juan Islands. Though "not conclusive" in his view, Mark Miller (2001:18-19) asserts that western tribes encountered by the American later tend to

present “fewer ambiguities to federal officials” and consequently they have “maintained more elements of their aboriginal culture [and] have had less difficulty securing recognition than eastern groups”.

2.3.7 Racial hybridity

It is common in acknowledgment research to encounter some version of the claim that outcomes are influenced by the degree to which a petitioning group and its members appear racially-authentic to non-Indians. Some research focuses on phenotypic characteristics, others on cultural characteristics such as language, religion, dress, diet, etc., while others stress institutional characteristics such as forms of political governance. Writing about the Eastern Pequots, Cramer argues that,

federal recognition processes seem more often to depend on how many aboriginal traits the petitioning tribe retains in common with the mythic notion of Indian or tribe, than to truly understand the history and reality of the petitioning group...Put simply, critics charge that BAR's requirements replicate White outsiders' views of what constitutes an Indian tribe. In the process of making themselves visible to the federal government, Indians seeking acknowledgment are forced to make most visible those traits that are stereotypically tribal; in the absence of such traditions, they may even need to create and develop them in order to be seen (Cramer 2001:320)

The possibility that racial perceptions influence outcomes arises largely because of criterion 83.7(e) requiring proof that “membership consists of individuals who descend from a historical Indian tribe” and the membership list

required by 83.7(d). Each person on the list must trace their ancestry to specific unambiguously Indian persons.

For instance, Bruce Miller argues that petition failure of the Samish and Duwamish is because their members were perceived as 'too White' (Miller 2003). Similarly, Burgess (2004), using data from interviews and archival materials, examines how representatives of state, local, and federal agencies, and other tribes, contested the identity of the Eastern Pequots of Connecticut. These individuals, he argues, thought the Pequot members appeared 'too white' prior to their favorable 2002 Final Determination, later reversed. Burgess describes a discourse infused with "hegemonic notions of race and ethnicity" tending to delegitimize the Pequots (Burgess 2004).

A more common theme in the acknowledgment literature is that members of petitioning groups are 'too Black.' Across the south and mid-Atlantic the best chance of survival for some tribes was to render themselves invisible to white institutions by establishing new villages deep in woods, swamps, and mountains (Porter III 1983). Over time many intermarried with African Americans because of the paucity of indigenous marriage partners (Mather 2003). The modern descendants of the offspring of black slaves and their native owners in the Five Civilized Tribes appear to some as black and therefore not Indian (Nowell 2000). For administrative purposes their ancestors were classified as 'colored' or more

frequently 'black'. In California, on the other hand, many Indians were counted as Mexicans in censuses and for other governmental purposes (Porter III 1983).

Misclassification was not always an accident of ignorance. American Indians were counted in the US census for the first time in 1890 and by 1920 the bureau had embraced the one-drop rule such that those Indians that had been counted as mulattos in the preceding censuses were now counted as blacks (self-identification was not used until the 1960 census). If in 1890 or 1920 or 1950 a census taker believed an Indian person 'looked' white or black, that person was counted and recorded as such, a type of documentary erasure (Cook 2002, Reilly 1983).

Numerous acknowledgment researchers believe that perceived racial hybridity among descendants is crucially important to outcomes for petitioners along the Eastern Seaboard and in several states across the Deep South. For instance, Mowa Choctow (AL), Golden Hill Paugussett (CT), and Ramapough Mountain Indians (NJ) believe they were denied because of perceptions their members had an excess of 'black blood' which they view as a greater obstacle than 'white blood' (Cramer 2001). Karen Blu's 1980 study of the Lumbee reveals how their contemporary identity, drawn from several traditions, reflects a commitment to a "state of mind" without "what are thought to be 'traditional' Indian customs and traits" (Blu 2001:63).

Jeremiah Nowell (2000) finds that both the state and other tribes rejected the Occaneechi Band of the Saponi Nation (NC) because of their explicit embrace of a mixed tri-isolate (Indian-Black-White) racial heritage, a legacy of survival strategies adopted during the 19th century. He finds ample evidence that other tribes in the state, who in his view are choosing to deny their black ancestry, fear that recognition of a tribe that openly embraces its racial hybridity will disturb their own racial self-identification. These views resonate with complaints heard by Mark Miller (2005:117) that most “unacknowledged entities believe that the mostly white professionals of the BAR hold biases against them based on their race or assimilation levels”.

2.3.8 External perceptions

External identification as an Indian tribe inarguably plays a critical role in the acknowledgment process. External identification is itself the first of the mandatory criteria and one which nearly every petitioner denied acknowledgment fails to satisfy even if they also would fail on other grounds. The power of external individuals and institutions is structurally inevitable in the very process of petitioning, as we encountered from de Costa (2006) given the mutual interdependence and power differentials of the petitioner and the authority receiving the petition.

There is a substantial stream in the acknowledgment literature that finds external perceptions essentially determinative. Historian Mark Miller, to take one careful example, argues that to “meet cultural expectations of tribalism, many groups must ‘play Indian’ to project an image of authenticity in public discourse” (Miller 2004:13, Miller 2013). This stream is perhaps best summarized by Miller in his 2001 dissertation:

most people in Europe and the Americas have particular views of Indians as ‘tribal’ peoples. These visions influence whether groups ultimately secure recognition. And, many Indians living on reservations also possess particular views of what it means to be tribal that influence the process as well. Imprinted in their minds by the popular media, most non-Indians conjure up images of primitive, dark skinned peoples living in self-contained, egalitarian villages when they think of Indian tribes. Inevitably, non-Indians also envision Indian tribes living in the American West on barren reservations where the modern image of Indian tribes comes to an end. Together, each of these constructs affects how non-Indians and even many recognized Indians view hopeful groups and how each interprets recognition policy. Regrettably, however, these images have left little room for numerous groups whose histories did not match the media-inspired model (2001:15-16).

Anthropologist Les Field (1999) traces this hegemonic discourse directly to the fieldwork of pioneering anthropologists from 1880s-1920s. Instrumental in developing and propagating this discourse, he argues, was the influential Alfred Kroeber at Berkeley and the Smithsonian’s Bureau of American Ethnology (BAE). The BAE was “the dominant force in anthropological research in Indian Country” during this period (Quinn 1992:82).

Foundational concepts regarding individual and collective tribal identity developed in this period informed policy-making decades later as “the IRA erected scaffolding on which particular versions of Indian tribal sovereignty could be unfolded, elaborated, and defended” and where those tribes conforming to these early perceptions were relatively advantaged (Field 1999:83). Field suggests a mental template for thinking about tribal identity was produced then and that it continues to exert tremendous social and political influence, most notably in the FAP. He (1999: 84-85) concludes:

The BAR has the power to decide what constitutes proof of Indian identities and, more profoundly, what is legitimate knowledge about Indians... Concepts such as "entity," "community," and "political influence and authority" are all highly subjective and malleable, and given BAR's historical origins, deeply imprinted by the historical wake of the IRA and the consequent efforts by Indian peoples whose existence was not affirmed by treaties or other arrangements with the federal government to obtain such recognition... BAR's function depends on its authority to categorize, classify, legitimate, and exclude as an arm of the policy-making machinery of U.S. Indian policy. Although the establishment of BAR and its authority over unrecognized tribes took place over a half-century after the heyday of the BAE, BAR seems to me to inherit the scope of power over knowledge production and legitimation of native identities that the BAE first carved out for anthropologists.

Anne McCullough and David Wilkins (1995) find that external perceptions are among the factors shaping the acknowledgment experiences of the Catawba Indian Tribe of South Carolina (recognized by Congress in 1993) and the Lumbee Indian Tribe of North Carolina. The four factors they believe are especially important are: (1) how well the tribe meets dominant conceptions about Indians

(external perceptions); (2) the cohesiveness of tribal self-identity; (3) the general public's perceptions of the legitimacy of their appeals; and (4) resource availability. The ability to become and remain a federally recognized tribe they argue "is dependent on how well that tribe 'fits' the social construction of 'Indian tribe' as perceived by federal officials" (McCullough and Wilkins 1995).

A second set of arguments in the acknowledgment literature describes how external perceptions privilege petitioners with more centralized forms of political governance. This influence emerges indirectly given the weight of the IRA model because of how it defines a federally-recognized tribe and its strong connection to elected councils, formal constitutions, and governance through political institutions. In his study of the Timbisha Shoshones, for example, Miller (2001:230) points out that,

the political organization of the Western Shoshones (like many other groups) did not approach popular conceptions of tribal organization. A central, political leadership simply was not needed and did not exist. The Timbisha Shoshones formed small, extended family groups spread over wide expanses of Death Valley, coming together in larger groups only during the winter or for annual events that included communal rabbit drives, pinion nut harvests, and an annual fall festival where certain informally recognized leaders exercised authority.

In comparable and yet different ways, the realities of governance and social organization in the Pacific Northwest was often characterized by dynamic kin networks loosely affiliated with other communities (Miller and Boxberger 1994, Miller 1989). Angela Gonzales goes further, critiquing the prevailing conception of

'tribe' in the FAP and federal Indian law in her analysis of the experiences of the Ramapough in New Jersey. Their experience illustrates to her that a "specific set of representations [of 'Indianness' and 'tribalness'] which tend to emphasize a severely limited, isolated, and decontextualized range of realities of being indigenous" worked against the Ramapough and others she examines (Gonzales 2002:2).

In the face of these perceptions and requirements, some petitioners may rationally contort themselves to adopt alien but more documentable identities.

Bruce Miller (2003:82-83) observes,

As the standards of evidence became more and more daunting, indigenous groups are forced further and further into the documentation of a past that never existed, as Suttles observed in his discussion of myths of chiefly and bounded societies. The very success of some communities in forcing their documentation of ancestral social organization into pre-established, Western-derived, ethnocentric concepts of prior indigenous life pushes other communities to attempt to do so as well, because they understand implicitly it will be required.

Mark Edwin Miller's (2001) study of the Pascua Yaquis, Timbisha Shoshone, Tiguas of Ysleta del Sur Pueblo, and the United Houma finds each had to some degree 'play Indian' in an effort to prove their racial and cultural identity merited petition success. He concludes the FAP is essentially working as intended to limit acknowledgment through a heavy reliance on written documentation and narrow standards that reflect a deep skepticism of petitioners by many non-Indians and existing federally-recognized tribes.

2.4 Documentary evidence: A factor not yet studied

The use of textual documents as legal evidence dates to antiquity but the American framework has more recent identifiable roots. The common law traditions the United States shares with other Anglo settler states emerged to a great degree from specific socio-legal innovations of 17th century England (Saks and Thompson 2003) and arguably have even earlier roots in the rise of what Michael Clanchy (1979) calls the 'literate mentality' in 12th century England that laid the foundation for the use of textual documents as evidence. Clanchy's (1979) fascinating and careful account examines the evolution of social and technological changes required for the rise of record-making and keeping cultures in the century after the Domesday Book. He characterizes textual records as socially-manufactured objects made to have certain kinds of legal value.

Between the late 17th century and the early 19th the preference for written over oral evidence in legal proceedings was slowly inverted, occasioned by new configurations of social power related to the changing role of the law. By the 17th century, elites in England perceived a need to control whether and how documentary evidence would be evaluated by lay jurors, giving rise to the basic structure of evidence law. John Wigmore argues something close to its modern form was consolidated from 1660-1730 (Wigmore 1904). Thus in the United States and other Anglo, common-law jurisdictions, documentary evidence as imagined

for use in legal and administrative contexts – what it is, what it proves, why it is or is not reliable, when and who and who can use it – are largely derived from a relatively brief but transformational era in late 17th century England.⁶

The cluster of concerns that arose during this period and their solutions codified in law left a deep mark on historiographical and especially archival theorizing about documentary evidence (MacNeil 2007). When modern archival science emerged in the late 19th century assumptions about evidence rooted in the positivist tradition of evidence law were “absorbed into its theory and methodology” and Heather MacNeil argues they remain “firmly embedded in archival thinking and underpin our current assumptions about what constitutes a reliable and authentic record in general, and in bureaucratic environments in particular” (MacNeil 2007:39). When archivists, for instance, “express a commitment to the protection of records as reliable and authentic evidence of action they are expressing a commitment to a philosophical ideal of truth” anchored in the rationalist tradition of evidence law (MacNeil 2007:39).

Anchored in the English Enlightenment these intellectual traditions reach far beyond though even today they are far from universal. The intellectual architecture for thinking about documentary evidence rests on specific Anglo intellectual foundations and, further, these traditions and that architecture differ

6. Though not examined here, the modern experimental method, legal theories of evidence, and significant streams of archival and historiographic theorizing can be traced to the same period.

substantially from traditions among indigenous nations in nearly all instances. The implications of this history for past and especially contemporary native and non-native communities are explored by archivists under the rubric of 'indigenous archives'. A growing number of archival scholars are critically interrogating these histories and their imprint on archival theories about records and evidence (Galloway 2006, Gray 1998, Millar 2006, Nesmith 2006, von Gernet 1996, Wareham 2001).

As great as the differences in record-keeping cultures may have been they are only one part of a larger matrix of differences. The civilizational encounters from the 17th to the late 19th century are among the most violent and wrenching in world history. This is true in terms of raw, corporeal violence and death, to a degree often denied and more frequently underappreciated in contemporary society, including in the academy (Blackhawk 2006, Williams 1990). It was also violent in the sense that these encounters often occurred across the chasm of incommensurable worldviews, spiritual traditions and cosmologies, social expectations, processes of governance, and modes of treating with other powers (Brown and Vibert 1996). The diversity among the indigenous peoples of this hemisphere has little historical parallel, quite apart from the chasm in the worldviews separating them all from Euro American peoples (Deloria 1969).

The acknowledgment literature presents a wide range of factors thought to influence petition outcomes. The privileged position of written documentation is

widely understood by authors of these works and some recognize that this preference favors certain petitioners while raising crippling obstacles to others. Criterion 83.7(a), for instance, explicitly requires written documentation proving outsiders recognized the petitioner as an autonomous and cohesive indigenous nation. Many struggle to produce sufficient written evidence to satisfy criterion 83.7(a) and those for political governance (83.7(c)) and community cohesion (83.7(b)) as well (Miller 2001).

Petitioners confront significant challenges when potentially useful documentary evidence is difficult to locate or may no longer exist or never existed. These challenges are deepened by a preference for textual over other forms of knowledge that fit poorly with oral-based record-keeping traditions and disadvantage petitioners whose ancestors attempted to obscure their identity from record creators and record keepers. Still others groups insist on representing identify in terms they find more authentic and reject the FAP on principle.

Even when useful documentary evidence does exist and is accessible, petitioners may believe it validates problematic histories and entails embracing alien representations of their identity. One of the more perceptive acknowledgment scholars, University of British Columbia Anthropologist Bruce Miller (2003:215), describes the dilemma confronting some petitioners because the FAP creates,

difficult and unnecessary procedural and recordkeeping demands on communities and, in rejecting the primordialist discourses of community oral traditions, replace them with a literalist reading of identity and cohesion that places priority on European-derived forms of knowledge and sources of authority. In rejecting one truth as constructed, another is substituted that overlooks the historical process of reorganization of indigenous communities, rejecting them as inauthentic and as lacking the qualities that the state imagines they ought to have. In addition, the emphasis on textual understandings, as opposed to community understandings of history, replicates biases and misunderstandings already present in state texts such as censuses, histories, and records of litigation.

Even as researchers acknowledge the importance of documentary evidence it has never before been the object of systematic inquiry. The aggregate effect of the preferences and biases explored in the literature suggest the FAP ought to confer advantages to petitioners possessing political and social forms most likely to generate documents deemed valuable as evidence within the administrative discourse. Tribes whose survival in the past necessitated avoiding the gaze of federal and local officials or scholars should tend to be underrepresented or misrepresented in anthropological and ethnological research, the documentary products of which are crucial sources of evidence in the FAP. They should appear less frequently in federal or state and local records or appear only intermittently. Petitioners lacking the kinds of political organization generating substantial and continuous documentary legacies should tend to fail at greater rates and will tend to less frequently attract routine documentation by non-Indians.

CHAPTER 3: Documentary evidence from FAP petitioners

In this chapter I analyze a few important characteristics of a large number of documents submitted as evidence by 11 FAP petitioners. It is not possible to analyze the content of these documents directly and instead I analyze metadata about them created by OFA for the Federal Acknowledgment Information Resource (FAIR) database. In this chapter 'documentary evidence' refers not to the content of documents but rather to OFA-created metadata about those documents. This approach is consistent with document analysis in archival science because I examine document characteristics of a large number of individual documents rather than their contents.

By analyzing a few important characteristics of a large number of documents it is possible determine whether there are differences between the documentary evidence mobilized by successful compared to unsuccessful petitioners. This provides relatively little insight into the decision-making process

of these petitioners, a topic to which I return in Chapter 5, but we learn the aggregate outcome of their multitude of decisions in a way never before attempted.

3.1.0 Methodology

The wave of scholars completing dissertations about acknowledgment in the early 2000s (Burgess 2004, Cramer 2001, Gonzales 2002, Miller 2001, Nowell 2000, Rozarie 2003) reviewed in Chapter 2 were largely sympathetic case studies. Many of these authors do not appear have used the access afforded by the one or two petitioning tribes with whom they collaborated to study documentary evidence. At that time one could also access submitted documentary evidence directly through OFA but in response to a court order access is now denied for all purposes unless responding to a Freedom of Information Act (FOIA) request (OFA, phone conversation and personal visit, August 14, 2010). Accessing all the documentary evidence submitted by each of 44 petitioners receiving a final determination by securing their individual assent is logistically impossible and access of this scope is no longer possible through the OFA directly.

3.1.1 Federal Acknowledgment Information Resource (FAIR) Database

Under another court order to accelerate their discovery responses in the Schaghticoke Tribal Nation litigation the OFA staff implemented a GAO

recommendation and created in 2002-2003 the Federal Acknowledgment Information Resource (FAIR) database (Fleming, personal communication, July 2, 2013). In testimony to the US Senate Committee on Indian Affairs OFA Director Fleming described its purpose and provided an overview of its functionality (2005:3):

[FAIR] provides on-screen access to all the documents in the administrative record of a case [and] has made a significant positive impact in the efficiency of the OFA. The FAIR system scans all submitted documentation and then the data is extracted, linked, and indexed to create a searchable administrative record. FAIR provides the OFA researchers with immediate access to the records and allows them to make more efficient use of their time.

The FAIR is not one database but a collection of Microsoft Access databases, one for each petition initiated or decided since its creation (a handful of petitions decided earlier are included as well). The court order did not require comprehensive retrospective digitization and indexing for cases decided before 2000 (Flavin, September 16, 2013). Since the creation of FAIR, records are customarily created for each document that petitioners submit as evidence. Several screen shots of the FAIR interface are provided in Appendix A.

3.1.2 Freedom of Information Act (FOIA) request

On March 22, 2011, I submitted a Freedom of Information Act (FOIA) request to the OFA seeking information about the FAIR database and about the documentary evidence for certain petitioners (BIA#2011-00665, March 22, 2011). My request

sought the field names for all FAIR database tables and the data for certain fields such as document type, author, and document title for a random sample of 11 petitioners provided in the letter. After five unsuccessful inquiries with OFA staff persons, in May of 2013, I left a phone message with OFA Director Fleming expressing my need for an expedited review. A long conversation with Director Fleming and staff historian Dr. Francis Flavin established that staff limitations meant they had not begun to satisfy the request and doing so would require significant labor, expense, and delay. Most of the petitioners in the random sample provided in my letter do not have FAIR databases, meaning there was no metadata and any of the specific information I requested (document type, title, etc.) would require individual retrieval (Flavin, personal communication, July 2, 2013). OFA is no longer assigned a FOIA officer and staff professionals now responsible for all FOIA requests are instructed to give them their lowest priority (Flavin, personal communication, August 27, 2013)

A greater obstacle is OFA's perception that they must manually-inspect documents to ensure no disclosure of exempt information. Manually inspecting 100s of thousands of paper documents not yet indexed in FAIR is beyond impossible. Acting FOIA Officer at Indian Affairs, Daphne Berwald, citing Barbara Coen and Director Fleming, explained that FOIA exemption 6 regarding "personal privacy interests" and *Quinalt Indian Nation v. Gover*, upheld in 2000 by the 9th Circuit Court (232 F.3d 896), permit exempting disclosure of the names of

individuals in almost all instances, including genealogical histories used to establish membership (D.J. Berwald, personal communication, November 6, 2013). This exemption includes disclosure of individual names appearing or easily inferred from FAIR records. For instance, a document titled “Birth certificate of Trond Erik Jacobsen” is likely to include named individuals exempt from disclosure. Director Fleming and Dr. Flavin agreed by phone to the contours of an expedited request in June of 2013 that was further refined over subsequent conversations. The main refinement was to exclude document titles and data from other fields with a high incidence of potentially exempt information.

3.1.3 Petitioner sample

Collectively these constraints make impossible an analysis of all documentary evidence for each of the 44 petitioners by any researcher. A truly random sample is equally untenable in a reasonable time at a reasonable cost. Instead I created a randomized list of all 44 petitioners and working with OFA Historian Dr. Francis Flavin we agreed to identify the first 11 cases (25%) for which he was able to provide the agreed metadata without undue delay or substantial cost. I gave Flavin the name of a petitioner from the randomized list and he indicated whether there was a FAIR database for that petitioner.

For those petitioners with a FAIR database, Flavin executed User-Defined Functions to gauge the degree of effort likely required to redact exempt

information. FAIR databases exist for 16 of the 44 petitioners. Working through my randomized list we reached the 11th petitioner for which Flavin could readily provide the requested metadata on the 44th and final petitioner on the randomized list. The selection of the petitioners was therefore not random but there was no active selection, avoiding conscious researcher bias.

Table 3: Petitioners with FAIR databases

PETITIONERS	STATE	POP	FAIR RECORDS	
Burt Lake Band of Ottawa and Chippewa	MI	858	16217	12.9
Duwamish Indian Tribe	WA	390	9631	7.6
Golden Hill Paugussett Tribe	CT	216	16121	12.8
MaChis Lower AL Creek Indian Tribe	AL	284	1780	1.4
MOWA Band of Choctaw	AL	3960	5979	4.7
Muwekma Ohlone Tribe of SF Bay	CA	400	5350	4.2
Snohomish Tribe of Indians	WA	836	14894	11.8
Nipmuc Nation (Hassanamisco Band) Webster/ Dudley Band of Chaubunagungamaug Nipmuck Indian	MA	1602 212	34992*	27.8
Mashpee Wampanoag	MA	1462	10908	8.7
Poarch Band of Creeks	AL	1470	6125	4.9
Wampanoag Tribal Council of Gay Head	MA	461	4065	3.2
		TOTAL	126063	100.0%

*The two Nipmuc petitioners have identical FAIR databases and for purposes of documentary analysis are treated as a single petitioner.

To determine whether the 11 petitioners in this sample differ from the other 33 petitioners without FAIR databases, I used F-Tests to test for equal variances then executed a series of independent sample t-tests to identify significant

differences for factors acknowledgment researchers have identified. These tests show no significant differences in the timing of a letter of intent or in the time to reach a determination. Nor is there a significant difference in population size. Most importantly, there is no significant difference in acknowledgment outcomes. The 11 petitioners in my sample, however, unsurprisingly received final decisions more recently on average than the other 33 petitioners.

3.1.4 Documentary evidence

The metadata I analyze are listed in Table 4 along with an example of the data OFA provided and the percentage of FAOR records missing data for each metadata field. These fields were chosen with the aim of minimizing manual inspection for names or other data exempt from FOIA disclosure.

Table 4: Metadata fields for FAIR records (n=126,062)

FIELD	SAMPLE DATA	MISSING	% MISSING
DocumentID	ACR-FDD-V001-D0200	1	0.001
Document_Type	Official State Document	15868	12.445
Document_Date	1858.00.00 - 1859.00.00	15863	12.583
Document_Date_Range	1858.00.00 - 1859.00.00	16214	12.861
Citation_Author	Shepherd, John W.	15899	12.612
Affiliation_Authors	State Reporter	96099	76.231

Dr. Flavin extracted data for each of the six metadata fields listed in Table 4 and prepared a Microsoft Excel spreadsheet where each row refers to a specific document submitted as evidence and each column to a metadata field (e.g., Document_Type). Ultimately, the OFA provided at least partial data for 126,062 individual documents in 11 FAIR databases. Less than 13% of the data are missing for every metadata field except author affiliation.⁷

3.1.5 Coding documentary evidence

The analyses below are based primarily on my coding of documentary types assigned by OFA to documentary evidence in the 11 petitioner FAIR databases in my sample. Coding for origins required inferring documentary origins from the OFA-assigned document types. This coding is subjective but rigorous. An enormous proportion all documents are assigned one of a relatively small number of document types. For instance, the 20 most-frequent types capture nearly roughly 75% of all document assigned a document type by OFA. In many cases inferring documentary origins is straightforward, for instance “Federal Census” is obviously from the federal government, while “Tribal Newsletter” is tribal in origin and “Town Record” is local in origin. A complete list of the codes assigned to the OFA-assigned document types is provided in Appendix B.

7. These include both records referring to documents where affiliations are unknown and where the notion does not apply, e.g., a birth certificate).

While undeniably subjective, my coding of documentary origins is more than sufficiently rigorous for exploratory research. Indeed, for several reasons the coding for documentary origins in this research is more objective and reliable than is often true of qualitative coding. First, because so few types account for the overwhelming majority of all documents in the 11 FAIR databases, systematically coding most of the 110,000 documents assigned a type by OFA is easily achieved once origin codes were selected for only a few dozen document types.

Second, many document types include terms or abbreviations that make coding their origins obvious. For instance, where the OFA-assigned document-type includes the term 'federal' ('Federal census,' 'Federal treaty', etc.) that document is very likely to originate with the federal government. Types that include 'BIA', 'Department of War', 'DOI' or 'Department of Interior, etc., are similarly easy to code as of federal origin. This method was useful for easily and reliably coding the origins of many other document types (e.g., 'town', 'country', 'MA', California). Many document types include BAR or ARB or OFA and are easily and reliably coded as originating with the OFA. Several document types include 'affidavit' or 'legal brief' or 'litigation' or 'pleading' and are easily coded as of legal origin. My core coding technique of documentary evidence involved sorting the 110,308 documents assigned document types by frequency and iteratively using the techniques just described to code a large number of

documents and then resorting by the field for origins to focus on the ever-dwindling number of records not coded for document origins.

3.2 Findings

All petitioners confront the enormous challenge of identifying and organizing and presenting 1000s of documents as evidence proving they merit acknowledgment.

The research that I described in Chapter 2 anticipates that petitioners would tend to struggle in this challenge and by logical extension those that fail would tend to struggle the most. Law Professor and Pointe-au-Chien member Ferguson-Bohnee (2008) argued that petitioners that would merit acknowledgment sometimes fail because they cannot secure the resources required to successfully petition.

Ferguson-Bohnee and others also argue that sometimes deserving petitioners are denied because of insufficient documentary evidence that no amount of resources can correct. The major criticism of the FAP relative to documentary evidence is the process is not sensitive to the implications of history on the ability of petitioners to find germane documentation.

There is a strong and significant correlation between the number of federal documents, meaning documentary evidence from federal sources, and acknowledgment outcomes, excluding OFA documents. This finding in the abstract is perhaps not surprising (federal documents do and should matter in acknowledgment). What is surprising is that the correlation is negative: The more

documents classified as federal in a case file the less likely it is a petitioner is acknowledged, $r(9)=-0.61$, $p < .05$. Unsuccessful petitioners on average submitted much more documentary evidence from federal sources than did the successful petitioners. Obviously the content of the documentary evidence matters a great deal but these data do not indicate that unsuccessful petitioners face an insurmountable challenge identifying and utilizing documentary evidence originating with the federal government. By contrast, there is no significant relationship between the quantity of tribal or state and local documentary evidence and outcomes nor is the overall volume of documentary evidence predictive.

Successful petitioners also tend to have far fewer documents per tribal member and this difference is significant, $t(7)=-1.888$, $p < .05$. In proportion to their population size, unsuccessful petitioners submit far more documentary evidence than do successful petitioners. While successful petitioners tend to submit fewer letters overall, and fewer letters from tribal entities, they do attract significantly more letters from Indian law advocacy organizations like the Native American Rights Fund, $t(2)=-5.221$, $p < .05$.

3.2.1 Documentary types

Are there significant differences in the types of documents used by successful petitioners and unsuccessful petitioners? Recall that one of the metadata fields for

which the OFA provided data is Document_Type. Document types are classifications of documents that were assigned by unknown staff members in the years since the creation of the FAIR database. According to Flavin, staff members now working on petitions assign document types as they create FAIR records for submitted document documentary evidence.

Table 5: OFA-assigned document types
(n=110,374)

PETITIONER	DOCUMENTS	% TOTAL
Nipmuc	34762	31.5
Burt Lake	15186	13.8
Snohomish	14730	13.3
Duwamish	9561	8.7
MOWA	5759	5.2
Muwekma	5089	4.6
Golden Hill	5079	4.6
MaChis	1740	1.6
DENIED SUBTOTAL	91906	83.3
Mashpee	10669	9.7
Gay Head	3987	3.6
Poarch	3812	3.5
ACK SUBTOTAL	18468	16.7
TOTAL	110,374	100.0

The OFA staff assigned 177 distinct document types across the 110,374 FAIR records with Document_Type data (86.6% of all records) but 10 of these assigned document types are assigned to more than 50% of all documents indexed

in the FAIR databases. The number of documents to which OFA assigned Document_Type data is listed by petitioner in Table 5 along with the share of all documents assigned a type represented by that petitioner. The Burt Lake Band of Chippewa Indians, for example, submitted 15,186 documents assigned a document type by OFA and that represents 13.76% of all documentary evidence OFA assigned a document type.

I merged thirty-eight of the original 177 assigned document types into other OFA-assigned types because they clearly referred to the same types of documents (e.g. "email" and "e-mail", "birth record" and "birth records", "enrollment app." and "enrollment application"). Documents assigned a document type including the term "BAR" for the Branch of Acknowledgment and Research (e.g., "BAR Historian Document") were replaced with the acronym OFA (e.g., "OFA Historian Document"), effectively merging those categories because they refer to the same document type produced by staff members of the same office. Document types were merged *only* if there was no overlap. For instance, the assigned document types "Descendancy Outline" and "Descendants Outline" are merged because no one petitioner submitted documents assigned both document types but the Duwamish from Washington State have both "Descendancy Chart" and "Descendant Tree" documents so these document types are not merged. Merging types is as subjective as applying codes to data. By merging only categories with no overlap I ensure my subjective coding avoids merging types there are strong

reasons to believe OFA staff viewed as distinct. Because the 20 most frequent OFA-assigned types account for nearly 75% of all document types, even if some merged low-frequency types are viewed by OFA staff as distinct these are of relatively little concern. Classifying OFA-assigned types into classes of documentary origins is more complicated

3.2.2 Documentary origins

Some of the researchers encountered in Chapter 2 argue that documentary absence helps to explain petition outcomes. Petitioners whose ancestors perceived a need to minimize their documentary traces and avoid the gaze of outsiders today face greater documentary challenges, especially for criterion 83.7(a) requiring proof of uninterrupted external identification. Most records generated about native peoples as collective entities are federal in origin (Smith and Kvasnicka 1981). For instance, most early encounters between indigenous nations and Euro-Americans and the most sustained and intensively documented interactions that followed involved representatives of the federal government.

This fact is rooted in the historical realities of early contact and federal supremacy in Indian Country and in Indian policy, beginning with Marshall's Trilogy⁸, codified in subsequent cases establishing congressional plenary power

8. *Johnson v. M'Intosh* (1823), *Cherokee Nation v. Georgia* (1831), *Worcester v. Georgia* (1832).

over tribes, capped by *United States v. Kagama* (118 U.S. 375, 1866). Petitioners seeking acknowledgment, however, often sought to avoid the federal gaze or were

Table 6: Most frequent OFA document types
(n=126,062)

DOCUMENT TYPE	N	%TOTAL	CUM%*	AVE.	STD DEV	COUNT**
Letter	17562	15.91	15.91	1604.45	2277.16	11
Ancestry chart	7883	7.14	23.05	1054.82	1043.07	11
Newspaper article	7125	6.46	29.51	647.73	788.30	11
Minutes	4206	3.81	33.32	382.36	447.66	11
Other	4099	3.71	37.03	372.64	1107.60	10
Petition exhibit	3772	3.42	40.45	342.91	513.93	11
OFA admin correspondence	3459	3.13	43.58	314.45	255.82	11
Pedigree chart	3240	2.94	46.52	1080.02	1802.54	3
Federal census	3132	2.84	49.36	284.73	358.11	11
Individual chart	3091	2.80	52.16	281.00	406.45	7
Membership file	3002	2.72	54.88	272.91	523.45	11
Cover page	2890	2.62	57.50	262.73	291.11	10
OFA genealogist	2648	2.40	59.90	240.73	233.20	10
Official federal	2553	2.31	62.21	232.09	234.33	11
Probate record	2322	2.10	64.31	211.09	586.96	7
Genealogical file	2248	2.04	66.35	204.36	677.80	1
Birth certificate	2089	1.89	68.24	189.91	383.17	10
Affidavit/deposition	2047	1.85	70.10	208.64	618.26	11
Enrollment application	1998	1.81	71.91	183.82	417.18	4
OFA anthropologist	1896	1.72	73.62	172.36	296.17	9

*Does not total to 100% because lists only the 20 most frequently-assigned document types.
**Count is the number of petitioners with at least one document of that type.

the victims of oversight or malice and therefore are much likely to face significant documentary gaps (Miller 2001, 2005, 2013; Miller 2003). While OFA does not require federal documents, not even for demonstration of external identification, if the universe of records about indigenous populations are disproportionately federal in origin, those tribes that are relatively invisible to federal institutions and representatives face an even greater challenge in securing acknowledgment by that same federal government.

Given the general history of indigenous interactions with Euro-Americans and the specific histories of petitioning groups we would anticipate that entities well-represented in federal records would have an advantage over those not well-represented in federal records. A hugely-disproportionate share of records of all types that are about tribal communities and their members are federal records (Smith and Kvasnicka 1981). On the other hand, the OFA recommends that petitioners make use of a wide variety of sources and in principle federal documents are not supposed to receive any particular deference, at least relative to other non-Indian document creators.

To test whether successful petitioners more readily utilize certain kinds of documents I coded each of the 139 document types assigned by OFA into mutually-exclusive classes designed to capture their origins. By mutually-exclusive I mean only that no document was coded into more than one origin

class. Over several iterations I assigned a code to represent the different documentary origins of all 110,374 documents assigned a document type by the OFA. All coding exercises are

Initially I assigned codes for documents that appeared to originate with any part of United States federal government, the Office of Federal Acknowledgment (or BAR, ARB, etc.), from any tribe (recognized or otherwise), and any state or local governmental entity. For example, documents assigned the type “Town Records” and “State Census” and “Official County” are coded as originating with state and local governments (State-Local).

Table 7: Origins of documentary evidence

ORIGIN	N	%	#TYPES*	DOCUMENT ORIGINATES WITH...
Tribal	38,432	34.82	40	Petitioning tribe
Letter	17,649	15.99	2	Letters (see: 3.2.3)
Individual	12,389	11.22	21	Personal: birth/ death, marriages, etc.
Ambiguous	11,004	9.97	27	Not obviously covered by other categories
OFA	9,026	8.18	7	Office of Federal Acknowledgment
Media	7,694	6.97	3	Print or TV news coverage or films
Federal	6,274	5.68	13	Federal agency other than OFA
Law	4,136	3.75	14	“Brief”, “affidavit,” etc., appear in doc type
State/local	2,967	2.69	11	State or local government
Academic	803	0.73	2	Peer-reviewed article or academic book
TOTAL	110,374	100.00	139	

*Number of OFA-assigned documents types coded into respective origin category

Sorting for those documents not yet assigned an origin code, I assigned additional codes for documents originating with or for individuals (e.g. the OFA-assigned

document types “birth certificate,” and “marriage license”), that were legal in origin (“Affidavit/Pleading”, “Judicial decision”). I repeated this procedure of assigning, sorting, and assigning a new code until all 110,374 were coded into one of 10 origin classes.

Table 8 lists these 10 documentary origin classes and their relative frequency across all documents assigned a document type by OFA. The Table also indicates the number of documents of varied document types that I coded for inclusion in an origin class. For instance, the class of non-OFA federal documents (row seven in Table 7) includes documents assigned 13 different document types by the OFA, such as ‘Federal Census’ and ‘US Military Pension’, both of which I coded as originating with the federal government. These data show that documentary evidence originating with a tribal entity of some type are the most common origin, followed by letters from individuals, then other kinds of individual documents (e.g. birth certificate), followed documents not open to classification. The kinds of documentary evidence existing research suggests dominates the FAP, basically governmental documents of non-Indian origins, represent a small share of all documents.

Table 8: Documentary origins, by petitioner

	OFA	FEDERAL	TRIBAL	STATE & LOCAL	LETTER	LITIGATION	PERSONAL	ACADEMIC	MEDIA	OTHER
	N = 9026	N = 6274	N = 38435	N = 2967	N = 12389	N = 17649	N = 4136	N = 803	N = 7694	N = 11004
TRIBE	%	%	%	%	%	%	%	%	%	%
Gay Head	3.9	1.5	2.4	11.5	1.4	5.5	8.1	3.7	8.1	1.4
Mashpee	13.3	2.8	13.5	30.3	3.9	4.5	1.7	11.5	14.4	8.2
Poarch	1.5	0.8	8.4	0.4	1.3	1.3	0.0	3.1	0.8	0.4
Burt Lake	22.9	15.7	14.1	7.7	9.9	6.8	20.7	9.7	11.4	8.5
Duwamish	15.9	14.9	6.8	5.8	7.8	11.4	6.6	17.9	7.6	9.3
Golden Hill	11.2	3.3	1.1	1.1	7.0	4.6	1.9	3.6	18.3	2.9
MaChis	2.3	2.3	0.7	1.5	0.4	0.0	7.0	8.1	0.3	0.4
MOWA	2.4	13.5	7.0	15.1	5.4	1.5	1.5	8.2	0.8	2.0
Muwekma	8.9	4.6	4.7	0.5	4.3	4.0	4.1	6.2	2.1	5.0
Nipmuc	10.3	23.5	29.6	20.7	46.3	5.2	28.3	18.6	34.0	52.0
Snohomish	7.4	17.2	11.7	5.5	12.4	55.2	20.1	9.3	2.3	10.0
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Table 9: Documentary origins, by outcome

		OFA	FEDERAL	TRIBAL	STATE & LOCAL	NEWS	PERSONAL	ACADEMIC	LETTER	LITIGATE	OTHER
Acknowledge (n=3)	N	1683	321	9337	1253	1790	1221	147	1155	467	1093
	%	18.7	5.1	24.3	42.2	23.3	9.9	18.3	6.5	11.3	9.9
Denied (n=8)	N	7343	5953	29098	1714	5904	11168	656	16494	3669	9911
	%	81.4	94.9	75.7	57.8	76.7	90.1	81.7	93.5	88.7	90.1
TOTAL		9026	6274	38435	2967	12389	17649	4136	803	7694	11004
TOTAL %		100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
		OFA	FEDERAL	TRIBAL	STATE & LOCAL	NEWS	PERSONAL	ACADEMIC	LETTER	LITIGATE	OTHER
Acknowledge (n=3)	μ	561.0	107.0	3112.3	417.7	407.0	385.0	155.7	49.0	596.7	364.3
Denied (n=8)	μ	917.9	744.1	3637.3	214.3	1396.0	2061.8	458.6	82.0	738.0	1238.9
Mean difference		-356.9	-637.3**	-524.9	203.4	-989.0	-1676.8	-302.0	-33.0	-141.3	-874.5
**t(8)= -3.67, p=.006											

Less than 6% originate with some part of the federal government, less than 15% if combined with the OFA documents, and less than 3% originate with all types of state and local governments taken together. These facts do not alone undermine the claim that documents originating from such sources are disproportionately influential; their influence could be independent of frequency.

The only significant difference between successful and unsuccessful petitioners is the average share of documents originating with the federal government, not including OFA documents. The average share of all documents submitted by unsuccessful petitioners originating with the federal government is 11.9% while the comparable share for successful petitioners is 1.7%, $t(8) = -3.67$, $p < .01$.

3.2.3 Letters submitted by petitioners

The focus of this section is an analysis of metadata for letters included in the 11 FAIR databases, in particular the affiliations of letter authors entered by OFA staff when creating a FAIR record for each letter. Letters are the document type most frequently assigned by OFA with 17649 letters from some 4328 unique named individuals, including 'Anonymous' and 'illegible'.

The total number of letters for each of the 11 petitioners and their share of all the letters to all petitioners is reported in Table 10 (e.g., nearly half of all letters

were submitted by the Nipmuc. FAIR databases contain an average of 1604.5 letters, an average share of 12.8% of all the documents in a file.

Table 10: Letters in petitioner case files
(n=17,649)

PETITIONER	LETTERS	%LETTERS*
Nipmuc	8177	46.3
Snohomish	2191	12.4
Burt Lake	1747	9.9
Duwamish	1367	7.7
Golden Hill	1227	7.0
MOWA	952	5.4
Muwekma	765	4.3
Mashpee	691	3.9
Gay Head	242	1.4
Poarch	222	1.3
MaChis	<u>68</u>	<u>0.4</u>
	17649	100.0%
*Cell represents share of all letters		

There is however enormous variability ($\sigma = 2279.8$) from 8177 letters (Nipmuc), nearly half (46.3%) of all the letters present in the entire sample to only 68 (MaChis). Unsuccessful petitioners submitted nearly 2000 more letters on average (2346.6 compared to 385) and this difference is significant, $t(6) = 1.961, p < .05$. The difference between the two outcome groups is significant excluding the Nipmuc so this difference is not merely a “Nipmuc effect”. More than half the letters were dated before the creation of the FAP with the earliest from 1675 and the most

recent from 2007 (there is no significant difference in the average age of the letters submitted by successful and unsuccessful petitioners).

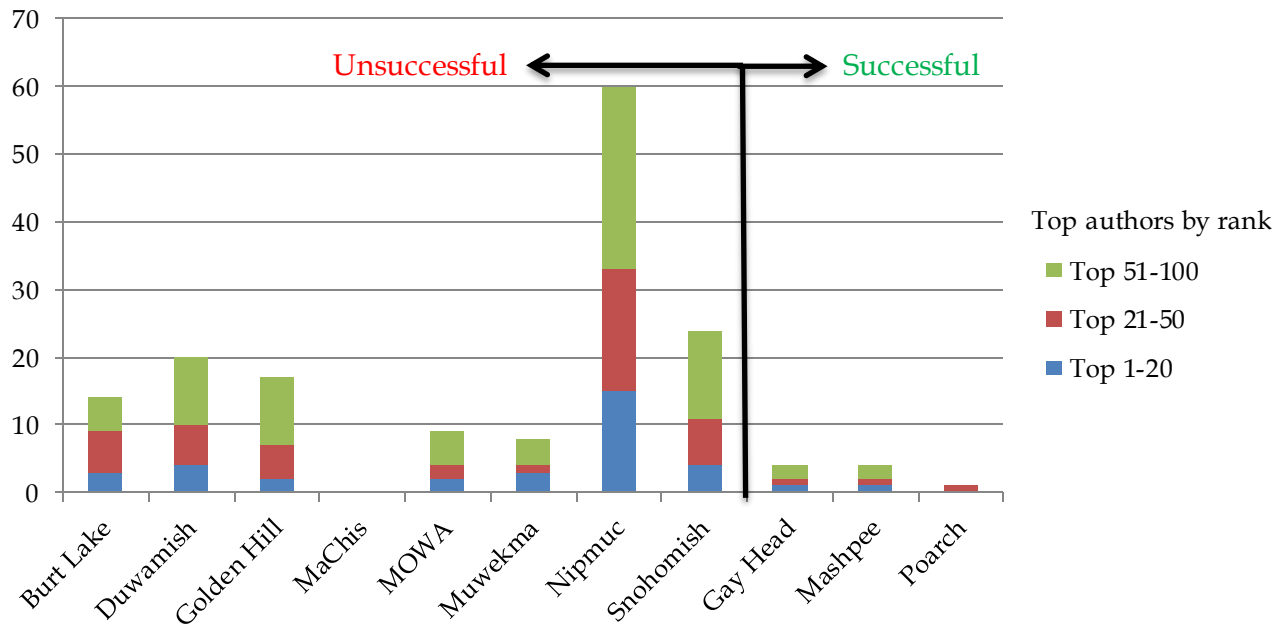
3.2.4 Letter authors

Letters from Nipmuc members are the major reason their case file is larger than the others (the top letter authors tend to include author affiliations which provide evidence for this claim). Fifty of the top-100 and 13 of the top-20 most frequent letter authors are Nipmuc members, including the three most frequent letter authors; these are individuals whose affiliations recorded by OFA tie them to the Nipmuc *and* they appear in no other petitioner case files.

As depicted visually in Figure 3, fully 80 of the top-100 most prolific letter authors are found in the databases of three unsuccessful petitioners: Nipmuc (50), Snohomish (19), and the Golden Hill (11). The successful Wampanoag Tribe of Gay Head (Aquinnah) and the Mashpee both had only one of the top-20 letter authors while the Poarch had none. Because this author is 'Anonymous' it is not the same prolific author, meaning all three successful petitioners effectively contain none of the 20 most prolific letter writers.

In network analytic terms, this is an extraordinarily sparse network: Only 170 authors (3.9%) appear in more than one petitioner database and 99.2% of all letter authors appear in only one or two databases.

Figure 3: Number of prolific letter authors by petitioner



Unsuccessful petitioners submit a great many more letters, including more letters from the most prolific letter writers. Among unsuccessful petitioners, when letters in their databases are from tribal entities their authors are likely members of the petitioning group. Successful petitioners, by contrast, submit fewer letters overall, fewer from the most prolific authors, and a larger share of their tribal letters are from non-members.

3.2.5 Affiliations of letter authors

Who writes letters appearing in petitioner databases? Several acknowledgment researchers argue that support from politicians and others with political influence

is significantly correlated with successful outcomes (McCullough and Wilkins 1995; Cramer 2001, 2005).

Affiliation data are available for more than half of the letters (8838 or 50.1%). When individuals support or oppose a particular petition many choose to express their views in letters to the OFA. Letters are not the only way that individuals express their views or exert influence but they are measurable and they are the only way views become part of the administrative record. Many letters are obviously written by persons not currently living or not directly related to the petition, judging by the date recorded for those letters. Because 'OFA administrative correspondence' is a document-type those documents assigned the type 'Letter' that are from OFA are not likely procedural or *pro forma* correspondence.

I coded the 8838 letters for which affiliation data was available into the 12 different classes listed in Table 11. Initially this coding exercise applied the taxonomy created for coding documentary origins but iterative coding of letters resulted in the addition of several novel categories (e.g., school). An author with OFA or BAR or ARB in their affiliation is deemed from OFA.

'Federal' letters are from persons affiliated with the United States federal government, including members of the military. Examples of authors that are coded 'state/local' include those from state agencies tasked with native issues, state wildlife commissions, governors, city councilors, mayors, and sheriffs.

Authors with affiliations coded as ‘academic’ worked at a named university or library or major museum (e.g. Peabody; for this purpose a petitioner’s museum was coded as a tribal affiliation and not an academic affiliation and there were few in any event). Affiliations coded ‘corporate’ are from letters written by individuals associated with a private, for-profit corporation.

Table 11: Affiliations of letter authors
(n=8838)

AFFILIATION	N	% OF 8838	AVE.*	AVE. SHARE**
OFA	508	5.7	56.4	5.0
Federal	3107	35.2	282.5	27.3
Tribal	2498	28.3	227.1	33.8
State/local	932	10.5	84.7	12.7
Law	927	10.5	92.7	9.2
Academic	282	3.2	25.6	4.7
News	65	0.7	8.1	1.0
Religious	82	0.9	9.1	1.6
Civil society	204	2.3	20.4	2.3
Corporate	131	1.5	14.6	1.3
School	23	0.3	2.9	0.4
Other	<u>79</u>	<u>0.9</u>	7.9	<u>0.8</u>
TOTAL	8838	100.0		100.0
*Refers the average number of letters with that affiliation in a case file **Refers to the average share of letters with that affiliation in a case file				

The code 'civil society' refers to letters from individuals with non-governmental organizations such as the Boy Scouts or the NAACP. There are many letters originating from one or another tribe, as analyzed below. Finally, most files include at least some letter affiliations that are not readily categorized.

The federal letters appear very diverse. The most obvious explanation is that the federal government itself is highly complex and diverse and many documented interactions involving indigenous peoples involve a federal official. Federal supremacy reigns most completely in Indian Country, a term with a legal definition that refers to lands held "in trust" by the federal government for recognized tribes. Thus many kinds of documented activities that for non-natives are not generally federal in character are for many native peoples routinely federal generating a significant federal documentary presence.

What is surprising is that unsuccessful petitioners have a larger proportion of letters from authors affiliated with the federal government other than OFA with an average share of letters from federal authors (32.1%) more than twice that of the three successful petitioners (14.1%), $t(9) = 1.575$, $p = .07$. Unsuccessful petitioners on average thus appear to have *more* documents per member, *more federal* documents, and *more federal letters* than successful petitioners. The shares of letters

from other tribes, state and local governments, and from the OFA are not significantly different between successful and unsuccessful petitioners.⁹

Do letters coded as federal differ between successful and unsuccessful tribes? I selected the 3107 letters coded federal and created sub-codes reflecting origins within the universe of the federal government. Because some cells in the contingency table have counts under 5 the χ^2 statistic is not reliable but impressionistically the main difference is that unsuccessful petitioners have 96.4% of all federal letters and they are concentrated in two categories: letters from the national (31.2%) and regional offices (47.6%) of the BIA and its predecessors.

Table 12: Federal letter types, by outcome
(n=3105)

TYPE	ACKNOWLEDGE		DENIED	
	N	%	N	%
OFA	3	2.7	81	2.7
Regional BIA/DOI	6	5.3	1424	47.6
Congress	39	34.5	405	13.5
National BIA/DOI	45	39.8	934	31.2
Military	1	0.9	50	1.7
Other Federal	<u>19</u>	<u>16.8</u>	<u>98</u>	<u>3.3</u>
TOTAL	113	100.0%	2992	100.0%

9. 'Federal documents' refer to the OFA-assigned document types that I coded into the federal document origins class. Any letter, a document type assigned by OFA, I coded in the first instance into the letters document class. Then taking these letters I identified their origins, including whether they originated with a person affiliated with the federal government. For this reason, "federal documents" and "federal letters" do not overlap and thus the greater number and share of federal letters found for unsuccessful petitioners is not the reason they also have more documents coded as federal in origin.

Examples of the author affiliations from regional BIA and DOI offices include “Superintendent Western WA Agency” and “Tribal Operations Officer Portland Area Office.” “Commissioner of Indian Affairs” and “Acting Associate Solicitor Division of Indian Affairs DOI” are examples of national DOI or BIA representatives.

The share of all letters by type for the two groups listed in Table 12 is depicted visually in the accompanying chart. More than one-third of the federal letters for the successful petitioners are from members of congress whereas only 13.5% are for unsuccessful petitioners. These data lend potential weight to the claim that the support of powerful federal officials influences outcomes (Cramer 2001). While both successful and unsuccessful tribes rely to a substantial degree on federal letters originating with individuals in federal Indian bureaucracy in Washington, D.C., only the unsuccessful tribes appear to rely heavily on federal letters from regional offices.

Despite finding no significant differences in the number of tribal letters overall a closer examination reveals some important differences. Cramer (2001, 2005) and McCullough and Wilkins (1995) argue that greater support for a petitioner from other tribes and national American Indian organizations increases the likelihood of acknowledgment. Are the tribal letters submitted by successful petitioners different? I selected all tribal letters and created sub-codes indicating whether a tribal letter was from the petitioning tribe, another tribe, an inter-tribal

organization (e.g., the American Indian Alliance), an entity active in Indian litigation (e.g., “Native American Rights Fund” or “Michigan Indian Legal Services”), or the letter is from an academic professional (e.g., “MOWA Historian”, “Professor, SF State University”).

These are obviously not perfect categories. First, I selected the 17,000+ FAIR database records for documentary evidence that were assigned the document type “letter” by OFA. Second, I selected the roughly half of these letters for which there was available data about their author’s affiliations, a total of 8838 letters, or about 8.0% of all the documents for which OFA provided document-type data. Third, I coded those 8838 letters into 12 unique categories, one of which was “tribal”, meaning a person or entity whose affiliations, as recorded by OFA, suggested a tribal background. There were 2482 letters coded as tribal (28.1% of all letters) and letters so coded were, on average, more than a third (34.0%) of the letters in a petitioner’s case file. Fourth, the 2482 tribal letters were coded to indicate whether they were from a member of the petitioning tribe, another tribe, a pan-tribal organization, or were from an entity I coded as legal or academic. This is different from the document types I coded as academic or legal as discussed in 3.2.2, none of which were coded by OFA as letters. Only letters I coded as tribal were given these sub-codes because these types of distinctions are discussed in the literature where others that can be analyzed are not.

Table 13 reports the total number of tribal letter types for each petitioner as well as the share of all tribal letters for each letter type. For instance, the Duwamish file contains a total of 155 letters coded as originating with a member of the Duwamish tribe (the petitioner) which represents 74.4% of all the tribal letters in the Duwamish case file. By contrast, the Duwamish file contains 23 letters from Pan-Indian organizations, about 11.1% of the tribal letters in their case file.

It appears there are differences in the types of tribal letters in the FAIR databases for acknowledged petitioners compared to unsuccessful petitioners, $\chi^2(4, N=2482) = 266.94, p < 0.0001$. These analyses suggest the differences are found in the greater-than-expected number of letters from tribal sources affiliated legal advocacy (e.g., Native American Rights Fund) among successful petitioners, consistent with Cramer (2001). Between 81.6% and 93.3% of each type of tribal letter is concentrated in the case files of unsuccessful petitioners with the one exception being letters from tribal entities coded as legal, 60% of which are concentrated in the case files of successful petitioners. It is also true that unsuccessful petitioners rely more on their members and inter-tribal organizations for letters than do successful petitioners, expressed as the ratio of all their letters originating from those two types of sources.

Table 13: Tribal letter-types, by petitioner

(All rows total to 100.0%)

	PETITIONER		OTHER TRIBE		PAN-INDIAN		LEGAL		ACADEMIC	
	N	%	N	%	N	%	N	%	N	%
Burt Lake	299	74.4	47	11.7	22	5.5	33	8.2	1	0.2
Duwamish	155	74.5	26	12.5	23	11.1	0	0.0	4	1.9
Golden Hill	214	74.8	44	15.4	19	6.6	8	2.8	1	0.3
MaChis	18	85.7	1	4.8	1	4.8	1	4.8	0	0.0
MOWA	269	76.0	26	7.3	3	0.8	0	0.0	56	15.8
Muwekma	155	81.2	16	8.4	16	8.4	0	0.0	4	2.1
Nipmuc	297	69.7	28	6.6	98	23.0	1	0.2	2	0.5
Snohomish	217	74.3	29	9.9	43	14.7	1	0.3	2	0.7
Gay Head	29	72.5	1	2.5	0	0.0	10	25.0	0	0.0
Mashpee	109	55.1	22	11.1	20	10.1	47	23.7	0	0.0
Poarch	23	35.9	26	40.6	1	1.6	9	14.1	5	7.8
TOTAL	1785		266		246		110		75	

To further clarify these suggestive analyses I completed a series of tests to determine if there are any significant differences in the share of each tribal letter type for successful as compared to unsuccessful petitioners. First assessing whether equal variances could be assumed using F-tests, I then used an appropriate series of independent sample t-tests to identify potentially significant differences.

The only significant difference is the greater share of tribal letters from legal entities in the databases for successful petitioners. For the successful Gay Head, Mashpee, and Poarch petitioners, such letters represented an average share of 20.9% of all tribal letters while it was only 2.0% on average for unsuccessful petitioners, $t(2)=-5.221$, $p < .05$.

Table 14: Tribal letter types, by outcome

(n=2482)

OUTCOME		PETITIONER	OTHER TRIBE	INTER-TRIBAL	LEGAL	ACADEMIC	TOTAL
Acknowledge	N	161	49	21	66	5	302
	%	9.0	18.4	8.5	60.0	6.7	12.2
	Exp.	217.2	32.4	29.9	13.4	9.1	
Denied	N	1624	217	225	44	70	2180
	%	91.0	81.6	91.5	40.0	93.3	87.88
	Exp.	1567.8	233.6	216.1	96.6	65.9	
TOTAL							2482
TOTAL %							100.0%

A similar procedure determined that the tribal letters in the case file of unsuccessful petitioners are more likely to originate with that petitioner (as opposed to all other types of tribal letters combined) than is true of successful petitioners. More than three in four tribal letters (76.3%) in the case files of unsuccessful petitioners originated with the petitioner but the corresponding share among successful petitioners is 54.5%.

3.3. Discussion

The profile of an unsuccessful petitioner is one that buries OFA staff under a blizzard of documents, particularly bits and pieces from the documentary legacies of regional Indian offices. Their FAIR databases contain more letters from federal sources but fewer from congresspersons, more letters from tribal sources, but from members of the petitioning. A larger share of all letters in the FAIR databases of successful than unsuccessful petitioners are from pan-Indian legal advocacy organizations. Successful petitioners submit less documentary evidence in this sample submit less documentary evidence per member, are less reliant on federal documents but do contain a higher share of letters from respected pan-Indian organizations and individuals in the national branches of the federal government. At least for the petitioners receiving a final determination that I examine, my anticipation, informed by claims in the literature, that unsuccessful petitioners lack the resources or ability to assemble documentary evidence is challenged by this research. Similarly, I anticipated that successful petitioners would submit more evidence from federal sources because they would tend to be better documented by federal entities. My analyses do not provide unambiguous evidence to support or undermine this perspective but they do suggest that not all documentary evidence from federal sources is equally valuable and that successful petitioners are relatively better documented by the national offices of federal

agencies. Because I cannot analyze the content of documentary evidence or petitions directly the conclusions supporting these profiles invite additional research.

Some conclusions arising from these analyses confirmed expectations motivating this work and the claims made by others, such as the importance of outside legal assistance and elected federal leaders. In the aggregate, however, the analyses suggest further research is needed to better understand the role of documentary evidence in the acknowledgment process. The fact that unsuccessful petitioners have more documents, more documents per member, more federal documents, and more federal letters than successful petitioners does not fit neatly with the claims encountered in the literature. These data and analyses are not so definitive as to warrant rejection of those claims but they do indicate a need for closer examination. In Chapter 5 I discuss the implications of these findings, including the degree to which limitations of this study temper its force. Research Question 1 asks whether successful petitioners mobilize different collections of documentary evidence than unsuccessful petitioners. The analyses in this chapter suggest there are differences but not always in the direction imagined in the acknowledgment literature.

CHAPTER 4: Interpreting documentary evidence in the FAP

Acknowledgment regulations direct the Office of Federal Acknowledgment to prepare a “preliminary review of the petition for purposes of technical assistance” [25 C.F.R. §83.1(b)(1)]. The principal form of assistance is a document called a *Technical Assistance (TA)* letter sent to petitioners following petition submission but prior to active consideration. In this chapter I analyze the 62 *TA* letters that the OFA staff produced from 1979-1997 for 42 of the 44 petitioners.

This chapter serves three important purposes. The first is to describe the form, content, and function of *TA* letters as a genre of communication in the context of federal Indian policy. What are the essential characteristics of *TA* letters? What is their structure and typical content? The second purpose is to describe the reasoning of OFA staff regarding the mandatory acknowledgment criteria and the evidential qualities of the documentary evidence submitted by

petitioners. My analyses identify significant and systematic differences in the perceptions of documentary evidence of successful and unsuccessful tribes.

The third purpose of this chapter is to analyze relationships between evidence evaluations for the acknowledgment criteria present in *TA* letters to other acknowledgment factors. My analysis combines qualitative analysis of the content of *TA* letters using thematic coding with quantitative analyses of letter content. The chapter concludes with a Multiple Correspondence Analysis (MCA) operationalizing for the acknowledgment criteria discussed in *TA* letters and several other acknowledgment factors. MCA is a technique of exploratory data analysis for datasets comprised largely of categorical data. Collectively these analyses constitute an initial survey of a largely uncharted space.

4.1.0 Technical Assistance letters

The 1990 *TA* letter to the Eastern Pequot Indian's of Connecticut in Figure 4 typifies the form, function, and content of a *TA* letter. On average a petitioner receives their first *TA* letter six years and nine months after submitting a *Letter of Intent to Petition*, with the longest period almost 19 years and the shortest nine months. By the time a petitioner receives a *TA* letter they have developed a more or less coherent petition narrative and in most instances have mobilized a large volume of supporting documentary evidence.

A petition narrative describes the history of the petitioning group and articulates the reasons and appeals to documentary evidence they prove they satisfy the acknowledgment criteria. Instructions included in a “Sample Petition Narrative” created by the OFA communicate the purpose of the narrative and its relationship to documentary evidence:

Although the regulations do not explicitly require a petitioner to submit a narrative describing a group’s continuous existence as an Indian tribe, 83.6 states, ‘the documented petition must include thorough explanations and supporting documentation in response to all of the criteria.’ It is, therefore, often beneficial for a petitioner to submit a narrative that provides these “thorough explanations.” The process of organizing a narrative helps a petitioner understand its history and whether its materials demonstrate that it is a continuously existing Indian tribe as required by the acknowledgment regulations (Office of Federal Acknowledgment, n.d.:1)

The petition narrative, the governing document submitted to satisfy 83.7(d), and the membership list submitted for 83.7(e) are not public documents and likely disclosed only after heavy redaction. Accompanying the narrative and the governing and membership documents are thousands of pages of documentary evidence also not directly accessible in most instances. The narrative cites documentary evidence provided in the associated volumes.

Combining the narrative and the documentary evidence, the petition is a significant work of scholarship. *TA* letters by contrast are fairly routinized documents communicating serving a critical if limited function in the FAP. No one would consider *TA* letters works of scholarship.

4.1.1 Descriptive statistics for *TA* letters

Nearly every petitioner (95.5%) receives a *TA* letter and a few as many as four with the 1.5 letters the average. *TA* letters average about three pages in length with the shortest only about two-thirds of a page and the longest over 12 pages. The name of the person receiving the letter and the sender of each *TA* letter, the number of the letter if more than one was received, and the date of the letter are listed in Appendix F.

Table 15: Distribution of *Technical Assistance* letters

# TAS	# PETITIONERS	% PETITIONERS		ACKNOW	%*	DENIED	%*
0	2	4.5		1	50.0	1	50.0
1	28	63.6		10	35.7	18	64.3
2	9	20.5		3	33.3	6	66.7
3	3	6.8		2	66.7	1	33.3
4	2	4.5		0	0.0	2	100.0
TOTAL	44	100.0%		16		28	

*Percent values refer to the share of petitioners with that # of *TAs* (row) that is successful or unsuccessful.

Table 15 shows the distribution of *TA* letters for successful and unsuccessful petitioners. The left side of Table 15 shows the total number of petitioners and the percentage of all petitioners receiving the corresponding number of letters in the first column, from 0 *TAs* to 4 *TAs*, the most received by

any petitioner. For example, the 28 petitioners receiving only one *TA* letter represent nearly two-thirds (63.6%) of all the petitioners (read vertically for all petitioners). The data in the right half of the table the data show the share of petitioners receiving each number of *TA* letters by acknowledgment outcome. References to *TA* letters in use a number corresponding to the numbered list of *TAs* in Appendix F.

4.1.2 Form and function

The main purpose of the *TA* letter is to offer preliminary guidance about petition weaknesses prior to active consideration. Since the late 1980s letters typically take the form of a criterion-by-criterion evaluation of the narrative and documentary evidence. *TA* letters thus combine interpretations of the criteria and evaluations of documentary evidence and guidance about potential sources of documentary evidence. Sometimes that guidance is specific, referencing particular documents, but more frequently it references the kinds of documentary evidence the petitioner should locate.

TA letters have three basic parts. The first part communicates the general purposes of the letter and situates its role in the larger acknowledgment process. This part of the letter to the Eastern Pequots in Figure 4 is within the blue borders. The second and most important part of *TA* letters communicates the OFA staff's

Figure 4: Technical Assistance letter to Eastern Pequot Indians



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245



IN REPLY REFER TO:

Tribal Government Services - AR

[MAA13 1990]

Mr. Roy Sebastian
Lantern Hill Reservation
RFD 7, Box 941
Ledyard, Connecticut 06339

Dear Mr. Sebastian:

The Branch of Acknowledgment and Research (Acknowledgment staff) has completed an initial review for obvious deficiencies and significant omissions of the Eastern Pequot Indians of Connecticut's documented petition for Federal acknowledgment as an Indian tribe. This letter describes the deficiencies and/or omissions that have been noted in the Eastern Pequot petition.

The obvious deficiencies (OD) review is provided for in the Acknowledgment regulations to insure that a petitioner is not rejected because of technical problems in the petition and that the group's status will be considered on its merits. The OD review is not a preliminary determination of any case. This OD letter does not constitute any evidence that a positive conclusion has been or will be reached on the petition, or on the portions of it not discussed in this letter. Nor does the fact that a petitioner responds to the OD review imply in any way that the group meets the seven mandatory criteria by simply submitting additional data. The OD review of the petition merely provides the petitioner the opportunity to submit additional information or clarification prior to the actual active consideration period. The OD review is a limited review conducted over a period of several weeks by a staff anthropologist, genealogist, and historian. Only during active consideration is the petition reviewed and evaluated in depth by the Acknowledgment staff to determine whether the group meets the requirements to be acknowledged as an Indian tribe.

With the requested information and/or documentation, the Acknowledgment staff can begin to evaluate the petition when it is placed on active consideration. The Acknowledgment staff's research during the active consideration period is for the purpose of verifying and/or elaborating on an already complete petition. The Acknowledgment staff's caseload no longer permits them to do the research necessary to fill in gaps in the petition on behalf of the petitioner to the extent they have at times done in the past.

Petitioners have the option of responding in part or in full to the OD review or of requesting us to proceed with the petition using the materials already submitted. The decision as to whether the group chooses to address the deficiencies noted in the OD review should be made by the group and not solely by its researchers. If your group requests that the

Section 1 of a Technical Assistance letter

Figure 4: Technical Assistance letter to Eastern Pequot Indians, p. 2

materials submitted in response to the OD review also be reviewed as to their adequacy, the Bureau of Indian Affairs (Bureau) will provide the additional assistance. The additional review will not be automatic. It will be conducted only at the request of the petitioner. The limits of these preliminary reviews must be taken into consideration. We do not know all of the questions that an in-depth review during active consideration might raise.

Our comments and questions are organized below in the following order: (1) general comments and questions, and (2) comments and questions pertaining to the specific Acknowledgment criteria.

GENERAL COMMENTS AND QUESTIONS

Our review indicates that there are significant deficiencies in the petition. We recommend that the Acknowledgment criteria be reviewed carefully and that the research be directed toward providing evidence that will demonstrate that your group meets each criterion. Your researchers should contact the Acknowledgment staff to discuss the criteria in order that we can provide additional technical assistance.

Your petition focuses on the current group and does not trace adequately the history of the Eastern Pequot as it relates to the Acknowledgment criteria. So that you might gain a better idea of all that can be involved in both preparing and evaluating a petition, we have enclosed a copy of our proposed finding on the Mohegan Tribe of Indians of Connecticut. Since this group is close to your locality, we think you will find the technical reports and bibliography helpful in finding other potential research sources. We also recommend strongly that the Eastern Pequot obtain the assistance and consultation of a professional ethnohistorical researcher in locating and evaluating sources of documentary information.

COMMENTS AND QUESTIONS REGARDING SPECIFIC CRITERIA

CRITERION (a):

The requirement of this criterion is to demonstrate the ethnic identity of the petitioning group continuously throughout history. The identification should be on a "substantially continuous basis" or "essentially without interruption" since first sustained contact with Euro-Americans. It should demonstrate the identification of the group as an Indian entity rather than the Indian identity of its individual members. The identification must also be external, meaning from outside the group as opposed to self-identification. It is usually necessary to show evidence of a number of kinds of external identifications. These various identifying sources often provide evidence for criteria (b) and (c) as well.

The documentation you submitted under this criteria is from limited sources and skips over entire generations. At one point it jumps from 1879 to 1935. Document (c) provides identification of Indian individuals

Section 2 of a Technical Assistance letter

evaluation of the documentary evidence submitted for the criteria. The third section offers contact information for further assistance and the delivery of additional materials.

A typical example of the kind of framing language found in the first section of all *TA* letters is a 1995 letter to The Burt Lake Band of Ottawa and Chippewa Indians in Michigan (denied in 2007):

The *TA* review is provided for in the acknowledgment regulations to ensure that a petitioner is not rejected because of technical problems in the petition and that the group's status will be considered on its merits. The *TA* review provides the petitioner with an opportunity to withdraw the documented petition for further work or to submit additional information and/or clarification prior to the actual active consideration period (*TA* #1).

The second major framing element of the opening section of letters is designed to ensure petitioners understand that letters are not dispositive. In language encountered in some variation in most letters over the past 25 years, a letter to the Duwamish in Washington State begins,

This *OD* letter¹⁰ does not constitute any evidence that a positive conclusion has been or will be reached on the petition or on the portions of it not discussed in this letter nor does the fact that a petitioner responds to the *OD* review imply in any way the group meets the seven mandatory criteria by simply submitting additional data (*TA*#8).

Since the very first letter in 1979 and regardless of length the second section of a *TA* letter is its functional heart and the core source of data analyzed here. The second section of *TA* letters communicates *OFA*'s preliminary criteria and

10. Until the mid-1990s Technical Assistance letters were called Letters of Obvious Deficiency (*OD*). Apart from their name the two letter types are the same, including similar language.

evidence evaluations. That first and very brief *TA* in 1979 read that the Poarch Band of Creek Indians petition,

does not adequately address the seven mandatory criteria found... It's most obvious deficiency is the complete lack of any material relating to membership and Indian ancestry called for in sections 54.7(d)-(f) [now 83.7(d)-(f)]. There is insufficient description and documentation of the community organization as it exists today and has existed over the past fifty years. Further, Exhibits 2B and 3A listed in the original letter are missing from our copies (*TA*#35).

Other early letters were relatively brief and relatively unstructured but every letter communicates preliminary evaluations of this sort. Since the mid-1980s, the second section of most *TA* letters provides an assessment of the evidence for each of the mandatory acknowledgment criteria in order.

Many *TA* letters contain suggestions of potential documentary evidence, When the OFA requests additional evidence to support claims in petition narratives they expect textual evidence. The *TA* letter to the Duwamish in Washington State, for example, in a section titled "Comments and Questions Regarding Documentation and Source Materials" reads:

The petition narrative often makes statements of fact without citing a source (for example, the reference to the 1945 annual meeting on page 209, much of the information presented in Chapter 3, and the factual statements made about the Fowler Family Network beginning on page 283). Some of the sources cited in the text of the narrative are not included in its bibliography and sources cited in the narrative are not keyed to the volumes of supporting documentation. Since our researchers review as many source materials as possible during the period of active consideration of a petition, it is critically important for our evaluation to know the source of all relevant data presented by the petitioner. Therefore, we ask that all statements of fact which are not solely the author's conclusions or

interpretations or which cannot be assumed to be known by the general reader be fully cited to a source (*TA#8*).

Only facts substantiated by citable sources hold significant evaluative weight. Another *TA* letter reads:

In all cases when general areas of documentation are requested, the request is meant to include the many key documents cited or referred to in the text, as well as important related documents that may have been relied on. It is important to provide detailed documentation in support of the petition (*TA#51*).

The third section of *TA* letters is invariably an invitation to contact an OFA staff person for clarification and each closes with the reproduced signature of the Director of OFA and a list of other recipients.

4.1.3 Selection justification

The importance of the *TA* letter takes several forms that collectively justify focusing my analysis on this document.

Nearly all documents produced or used during the FAP are effectively inaccessible while every *TA* letter is publicly-available. A *TA* letter is produced in nearly every instance and is now required, affording easy and complete access to this source of data about the FAP. More edifyingly, the *TA* letter is particularly interesting because of its function and because it facilitates inter-organizational communication among participating groups across time. These letters function as part of the 'stocks of knowledge' so crucial to institutional reproduction and competent and adaptive individual performance in organizations (Giddens 1984).

Petitioners can access and review *TA* letters sent to other petitioners while they craft their own petitions. The OFA staff sometimes reference earlier *TA* letters in the body of another, including those sent to other petitioners. Along with *Proposed Findings* and *Final Determinations* they provide the language cited in the *Precedent Manual*. Before committing irrevocably to active consideration, the *TA* communicates deficiencies that some petitioners might rectify. They also formally encapsulate the evidence reasoning of OFA staff in a way that is not otherwise accessible. The *TA* letter is a congealed representation of a complex set of evidence evaluations produced during the phase of greatest flux in interpretations of documentary evidence.

4.2.0 Methodology

This section describes in detail how I acquired and processed 62 *Technical Assistance* letters and the three complementary methods I use to analyze reasoning about documentary evidence by the OFA staff. In brief, the first method involves systematically coding for several themes to identify how OFA staff articulate and explain their evaluations of documentary evidence. The second method identifies systematic linguistic differences in the *TA* letters of successful and unsuccessful petitioners. The third method is a Multiple Correspondence Analysis (MCA) I use

to explore the underlying relationships of some factors raised in the acknowledgment literature and the documentary factors I discuss in this chapter.

4.2.1 Document preparation

OFA makes available every *TA* as PDF image scans of original letters as part of the Acknowledgment Decision Compilation published online.¹¹ I downloaded all 62 *Technical Assistance (TA)* letters for the 44 petitioners. The Digital Conversion Unit (DCU) in the office of Digital Library Production Services at the University of Michigan provided access to the PrimeOCR system they use to process millions of pages of images as part of their digitization initiatives. Using Adobe Acrobat Pro, each multi-page PDF file for every *TA* letter was exported as a series of individual pages in the `.tiff` image format. PrimeOCR processes each `.tiff` file for character recognition and a single `.txt` file is created for each page of every letter. By incorporating six different OCR techniques PrimeOCR achieves greater accuracy in character recognition with “voting” algorithms to compare results, reducing error rates (Prime Recognition 2013). A total of 333 individual pages and a total of 790,313 characters were recognized using the Prime OCR.

For each file processed PrimeOCR produces a corresponding confidence number ranging from 100-900 with 900 representing the highest degree of

11. At: <http://www.bia.gov/WhoWeAre/AS-IA/OFA/ADCList/PetitionsResolved/index.htm>. Last accessed 24 June 2014. Not available as of July 2014.

confidence. According to its creators, repeated tests demonstrate that any number over 700 in PrimeOCR is deemed accurate (Prime Recognition 2009). The confidence statistics reported in Table 16 indicate the average page of a *TA* letter was recognized and converted at a confidence level above this accuracy threshold (789.2/900).

Table 16: OCR confidence for *TA* letters
(n=333)

	CONFIDENCE*	# CHARACTERS
AVERAGE	789.2	2373.3
STD DEV	142.3	921.9
MEDIAN	849	2541
MODE	879	2538
MIN	108	33**
MAX	888	4274
*100-900 confidence scale **Two letters note only that no TA was produced		

I manually corrected some residual translation errors and applied nominal formatting to the letters, a burden eased through semi-automation and global text searching and replacing. Error estimate specificity was thus lost but final accuracy for each document should approach 100% because ambiguities were resolved through direct visual inspection. Using a PERL script I merged individual letter

pages into a single `.txt` document for each *TA* letter and a filename corresponding to the original *TA* letter.¹²

4.2.2 Analysis platform and case variables

I imported 62 *TA* letters into the Provalis Research PRO Suite, a mixed-data analysis platform that integrates functionality for qualitative document coding and analysis (QDA MINER 4.0.4), quantitative text processing and analysis (WORDSTAT 6.1.7) and a module for statistical analysis (SIMSTAT 2) (Provalis Research 2011). When appropriate I used the Data Analysis add-in for Excel and the commercial Excel module XLSTAT.¹³

For each petitioner I created a case in QDA MINER and imported or entered data for several acknowledgment factors discussed in Chapter 2 (e.g., outcome, size) and the dates and number of *TA* letters sent to that petitioner. Each *TA* letter was imported individually as a *TA1* document variable, a *TA2* document variable, etc. For instance, the Poarch Band of Creeks (OFA petitioner 013) is a case in QDA MINER and that case is linked to *TA* variables for each of the three *TA* letters they received. I created variables for each of the mandatory criteria and indicated whether or not the OFA deemed that petitioner as likely satisfying each

12. For instance, file 001_TA_Letter2_Page_1.txt and the file 001_TA_Letter2_Page_2.txt were merged into a single .txt file called 001_TA_Letter2.txt, referring to the second *TA* letter to petitioner 001.

13. Available at <http://www.xlstat.com/en/>

criterion based on evaluations of documentary evidence communicated in *TA* letters.

4.2.3 Qualitative content analysis: The codebook

To analyze how the OFA staff evaluates documentary evidence I created a codebook designed to identify themes of interest in the *TA* letters. The final codebook and brief scope notes for each code is provided in Appendix D and coding frequencies are provided in Appendix E.

Using this codebook in QDA Miner, I coded *TA* letters for the presence of themes in several distinct categories: evidence reasoning, direct analysis of documentary evidence, discussions about criteria 83.7(a)-(f), and individually-named persons by their role (e.g. tribal member, OFA staff member, letter author, letter recipient). The codebook evolved organically from themes identified in the literature and through multiple readings of the *TA* letters. Letters were coded for themes not reported in this study.¹⁴ The name of the petitioner and values on the acknowledgment variables (e.g., outcome) were unknown during coding.

I read each letter without coding. Randomizing their order of appearance I again coded *TA* letters for passages discussing evidence, documentation, and the acknowledgment criteria. This first coding was very “loose” in that any

14. For instance, I initially created codes for each of the three essential elements of the Pennington-Hastie story model of evidence reasoning: construction, target, and match (evaluation). My analyses revealed by coding for model elements were intriguing but pointed in directions I determined were best left for future work.

combination of sentences or paragraphs that on quick review was about evidence in some way, for instance, received an “evidence” code. After coding the entire corpus at this crude level I began creating but not applying a list of sub-codes for each of these broad themes. Then I reflected on this proto-codebook to refine categories to better distinguish the concepts I wanted to capture with the sub-codes. The product of this iterative process was a codebook with themes for evidence, documentation, the acknowledgment criteria, and persons (other codes were applied but are not discussed here) with sub-codes for each theme.

The evidence theme included sub-codes for passages about authenticity, credibility/authority, reliability, and documentary and explanatory gaps. Documentary gaps are passages in which the *TA* letter describes claims for which documentation is not provided. Explanatory gaps are those for which the provided documents are insufficient to support the claim for which they were submitted. Documentary gaps are closed with more documents. Explanatory gaps may require additional documents but, crucially, call for documents proving more than those submitted are perceived as capable of proving. The documentation theme coded for the presence of any evaluation related to documents, including sub-codes for suggestions of documents petitioners might secure, direct evaluations of specific documents, and requests for additional documents.

Codes were created for each of the 83.7 acknowledgment criteria (a)-(f), and any discussion of prior-recognition or the 1994 revisions. Passages where OFA

describes weaknesses in the narrative or the documentary evidence were coded for one or more of the criteria depending on the content of the passage. Because *TA* letters do not discuss criteria perceived as satisfied in a *TA* letter, each instance of the application of a criteria code represents a passage describing some type of deficiency in the evidence for a criterion.¹⁵ The last theme – persons – includes sub-codes for the *TA* letter author and recipient, and the mention of a researcher, tribal member, or another tribe.

This initial codebook was used to code a random sample of seven *TA* letters, resulting in the addition of three sub-codes and a refined scope for some existing codes. The updated codebook was used on another random sample of seven *TA* letters with one letter overlapping both coding efforts and the sub-codes included. After examining the content of passages so coded I was satisfied with the scope each code. I used this codebook in QDA Miner to code all 62 *TA* letters for the presence of these research themes of interest. During coding, *TA* letters were presented for coding in random order and with all other variables hidden from view. Of course letters discuss specific issues with named petitioners.

The probative value of quantitative measures of reliability in qualitative data analysis remains a topic of some controversy, at both the conceptual level (what does reliability mean in qualitative research?) and the methodological level

15. The letter might read: '83.7 (c). Documentation appears to meet this criterion' Such perfunctory passages were not coded because they reveal no reasoning about how the criteria or evidence was interpreted. This means that each instance of a code for a criterion is a discussion about some perceived deficiency.

(how do we know when reliability exists?). My judgment is that strong claims of reliability are generally an overreach for qualitative data analysis based on subjective 2nd-order human interpretations of complex social phenomena (the researcher's interpretations of others' interpretations).

In qualitative research, such as content analysis using coding, the potential for overreach is particularly great if yoked to claims of external validity. If the concept of reliability has real meaning in qualitative research it must refer more to internal consistency than external validity or even interpretative repeatability. It is not possible, or at least not meaningful, to establish the validity of a set of codes for identifying themes or concepts in documents beyond those to informing their creation and application.

Instead researchers should demonstrate internal consistency in code application through a measure of inter-coder agreement. I provided the codebook and seven random *TA* letters to Dr. Nicholas Lougee at the Jaqua Academic Center at the University of Oregon and in 45 minutes described the scope of each code. I described in very broad terms what *TA* letters do, who prepares and receives them, and briefly reviewed the history of federal acknowledgment. Dr. Lougee coded a random sample of seven *TA* letters using the same codebook. QDA Miner yielded a retrospective measure of agreement of a Cohen's κ of .67 which is "substantial" for qualitative research purposes on the highly-cited

Landis-Koch scale (Landis and Koch 1977, Viera and Garrett 2005). It is certainly sufficient for an exploratory study.

4.2.4 Quantitative text analysis: Text processing

I identify significant differences in the normalized word frequencies in the letters of successful and unsuccessful petitioners and in the words contained in passages bearing particular codes. I used Provalis Research's WordStat 6.1 for all text processing and quantitative analyses of the 62 *TA* letters.

The essential aim of normalization in text processing is identification of related and semantically-rich terms with slight morphological variations. Each processing step was implemented using procedures native to WordStat 6 (Provalis Research 2011). The basic objective is to identify the semantically-rich terms in a corpus relative to a native language baseline (English in this instance) and/or semantically-rich terms within documents relative to others documents in the same corpus. The corollary is that processing should remove from analyses those terms that do not contribute to the substantive meaning of texts. Text processing is critical to quantitative text analysis because semantically-related term variants require harmonization to effect meaningful frequency normalization.

First, I applied the Porter stemming algorithm for stripping suffixes (e.g., words are stripped of such suffixes as 'ed' and 'ing') (Porter 1980). Second, I implemented standard English-language substitution (harmonizing verb tenses,

converting plural to singular, etc.) through a dictionary-moderated method adapted from Krovetz's KSTEM substitution algorithm. KSTEM represents an improvement over alternatives in that the output are root forms of words derived from an adaptive dictionary, as opposed to word stems created algorithmically, reducing the chance of form conflation (e.g., authority reduced to author) (Krovetz 1993). A stop list excluded common terms of very low semantic value, such as conjunctions and articles (Provalis Research 2011).

The 62 letters yielded a total of 90,755 words of which 3097 were unique with 1562 appearing in two or more *TA* letters. A total of 47,804 words (52.7%) were excluded from analyses because they are stop words of low semantic value. Any word appearing at least twice in the corpus was included in analyses if not also on the stop list. There is essentially no important distinction in my use of 'term' and 'word' but technically these analyses translate words into tokens and normalization includes canonicalizing these tokens so that related terms with morphological variations are counted as a single term.

My final processing step involved creating a vocabulary profile for the entire *TA* corpus, another for the *TAs* of the 28 unsuccessful petitioners, and a third for those of the 16 successful petitioners. A vocabulary profile is a normalized term-frequency matrix derived for the terms (post-processing) in a corpus of documents. It allows, for instance, the identification of significant terms differentiating two document collections.

4.2.5 Multiple Correspondence Analysis (MCA)

Multiple Correspondence Analysis (MCA) is one of a class of exploratory multivariate data analysis techniques that includes Principal Component Analysis, factor analysis, and clustering, all of which are designed to reveal latent structural patterns in data through data reduction. English speakers first encountered MCA in the work of the great French sociologist Pierre Bourdieu, in particular in his *La Distinction* and *Homo Academicus* (Bourdieu 1979/1984, Bourdieu 1988). MCA is used in a large number of different contexts ranging from exploratory to confirmatory research. The most common and accepted use of MCA is to explore the relationships of categorical variables and cases. One strength of MCA as an exploratory technique is that the relationships of each of the values, or levels, of the categorical variables can be individually analyzed. For instance, a categorical variable for hair color might have the four values or levels of brown, blonde, black, and red and the relationships of each of these levels to each other and to cases can be analyzed using MCA.

Built on the mathematical underpinnings of the work of statistician Jean-Paul Benzécri at École Normale Supérieure in the 1960s, MCA is widely used by French social scientists (Panagiotakos and Pitsavos 2004). What characterizes the French use of MCA is an emphasis on the geometric relationships of nominal

variables and cases using the centroid principle rather than the generation and interpretation of a χ^2 statistic.

MCA is an extension of Correspondence Analysis (CA) to analyze multi-way contingency tables, yielding information about the relationships of categorical data akin to that which factor analysis yields for continuous data. The interpreted results essentially combine a series of contingency tables into a visual representation of two or more dimensions interpreted like factors in factor analysis (Lebaron 2009). Where factor analysis is designed to decompose variance across continuous variables the CA algorithm decomposes an overall χ^2 statistic for the multi-way contingency tables. In MCA the term “inertia” is used in a way that is analogous to the amount of variance explained in factor analysis (Michailidis and de Leeuw 1998).

MCA executes the CA algorithm on a table comprised of cases (rows) and more than two categorical variables (columns) transformed into an indicator matrix, meaning the levels of the categorical variables are dummy-coded (e.g. a three level categorical variable with the values 1, 2, and 3 is expressed as 1 0 0 or 0 1 0 or 0 0 1). Imagine a categorical variable for gender with two values or levels, male and female. For a given case (row) the gender variable has two columns with the possible values 1 0 for one gender or 0 1 for the other. A categorical variable with the values brown, black, blonde, and red is expressed in an indicator matrix across four columns; a person with brown hair might have columnar values of 1 0

0 0 for the hair color variable. Data are normalized by calculating relative frequencies so that the sum of all cells in the table is equal to 1. A subsequent series of transformations involving matrix algebra produces a Burt Table ultimately yielding coordinates for the values or levels of the categorical variables and cases placed in a low-dimensional Euclidean space (Greenacre 1984, Hoffman and Leuw 1992).

Using the XLSTAT statistical add-in package for Excel, I created a case-by-variable table where the cases refer to the petitioners and the variables are the seven 83.7 criteria (a)-(e), the timing of petition initiation, decision, and first *TA* letter by decade (1970s, 1980s, 1990s, 2000s), and geography using US Census Regions Northwest, Southeast, Midwest, and West, and the presence of another FAP petitioner in the same state. I also created two binary categorical race variables depending on whether a petitioning group resides in a zip code above or below the national average for individuals self-identifying as mixed African-American-American Indian or White-American Indian.¹⁶ I operationalized for the presence of tribal gaming by indicating whether or not an Indian casino existed

16. There are no significant differences in the share of the population self-identifying mono-rationally as white, African American or American Indian between ZIP areas with petitioners receiving final determinations and those without. ZIP areas with decided FAP cases have significantly more individuals self-identifying as of mixed ancestry than areas with no petitioners. The largest of these differences is in the proportion of the population identifying as African American-American Indian which is nearly 300% greater on average in areas with petitioners than areas without, though the share is small in both types of ZIP areas (0.146% vs. 0.052%), $t(36) = 2.27, p < .05$. The self-identified racial combinations White-American Indian, $t(36) = 2.39, p < .05$, and White-African American, $t(33) = 1.73, p < .05$, are both more common in ZIP areas with petitioners than without, albeit with much narrower mean differences. The null hypotheses that there are no differences between ZIP areas with and without petitioners must be rejected because in each of the three significant race combinations the t statistic exceeds their corresponding t_{CRIT} values. Among the 44 petitioners receiving a final determination, however, the share of the population identifying as African American and American Indian is no different between successful and unsuccessful petitioners.

anywhere within a US Census ZCTA3 area (e.g. the region that shares 481 with Ann Arbor's 48102) that also includes one of the 44 petitioners. Descriptive statistics for the variables are provided in Table 24 in the discussion of the MCA findings.

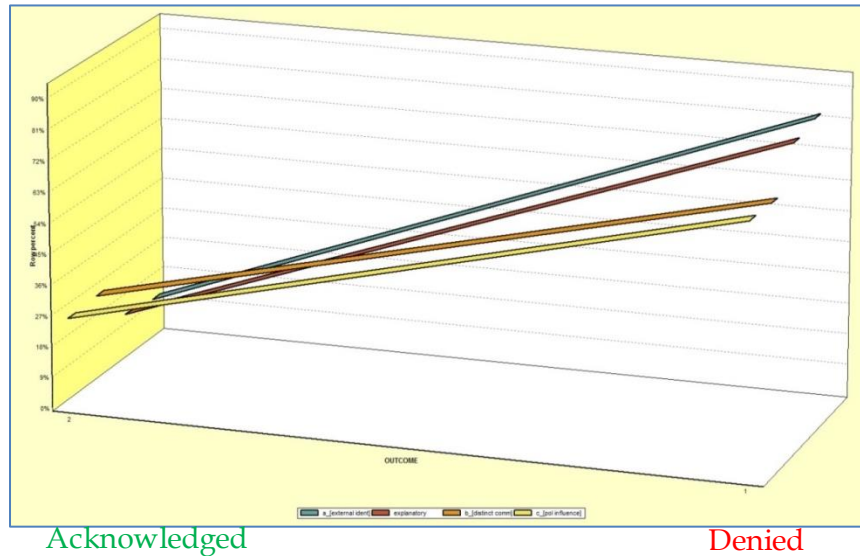
4.3.0 Findings and discussion

The scholarly acknowledgment literature is critical of the FAP at least in part because the availability of documentary evidence is thought to disadvantage petitioners relative to federally-recognized tribes and to privilege some FAP petitioners over others. These criticisms typically include some variant of the argument that the FAP requires that petitioners prove they are a 'legitimate tribe' through a text-centric procedure infused with non-Indian conceptions reflecting an "historic bias" favoring,

communities with formal relationships with Euro-American governments. The bias exists because it is these very non-Indian relationships and the structures they generate that allow many modern groups to be historically, genetically, and politically visible as "tribes." ... To gain status, petitioners are forced to exhibit at least some characteristics of recognized tribes or nations such as having some manner of formal or informal territories, laws and sanctions, and structures of government-attributes that many non-reservation peoples simply could not maintain in light of the United States' longtime goal of obliterating these very attributes (Miller 2004:11)

Starna (1992: 134) is nearly as dramatic: "What has emerged is a process that is, at best, inconsistent and possibly negligent, and at worst, willfully irresponsible."

Table 17: Coding differences in TA letters, by outcome



CODE	ACKNOWLEDGED*	DENIED*	χ^2	<i>P</i>
(a) external	14.3%	85.7%	10.00	.004
(b) community	27.3%	72.7%	5.04	.030
(c) political influence	26.7%	73.3%	4.01	.050
Explanatory gap	15.8%	84.2%	6.78	.013

*Percentages refer to the share of cases receiving the code (rows sum to 100%). For example, 85.7% deemed as failing external identification in a TA were later denied acknowledgment

Supporters of the existing acknowledgment process, including many recognized tribes, believe the imperfect process at least ensures only meritorious petitioners are acknowledged following a rigorous review. Given widespread agreement that documentary evidence is important we should expect to find

differences in the extent or quality of documentary evidence used by successful petitioners and differences in how their evidence is perceived by the OFA staff.

The acknowledgment criteria are not equally daunting. The criteria more reliant on documentary evidence from non-Indian entities are stronger predictors of future outcomes than less-reliant criteria. The significant evidence weakness discussed in the *TA* letters is not the lack of documentary evidence but rather some critical explanatory weakness (significant here means statistical significance). One would expect that early weaknesses would presage future challenges just as future strength would seem more likely built on perceived early strengths. And they do, but not equally because those pivoting on external perceptions and documentary evidence are stronger predictors.

4.3.1 Differing OFA interpretations of evidentiary weakness

I coded all 62 *TA* letters for passages describing two types of evidentiary weaknesses. Documentary gaps refer to passages in which the OFA staff describes some set of documents that are incomplete, for instance a set of birth certificates for members with the some certificates missing. Documentary gaps refer to an evaluation that certain known or anticipated documents have not been submitted. For example, a *TA* letter to the United Lumbee in North Carolina contains a passage coded for documentary gaps:

However, there are still several areas which need documentation. Although you have enrolled approximately 12,000 individuals, we understand that the potential eligible membership roll may actually include as many as 30,000-40,000 individuals. We will need a complete membership list before we can begin active consideration of your petition. The records of the National Archives appear to be one source of genealogical material that has not yet been fully examined" (TA#57).

Another passage coded for documentary gaps declares that despite obviously "extensive compilation of data and analyses" the Steilacoom petition was incomplete because "only a very limited amount of the documentation relied upon for the petition was submitted (TA#51). The TA to the Schaghticoke, the most recently-decided case in these data, indicates that petitioners must provide documentary evidence for each claim, adding that,

Many important documents are referred to in the Schaghticoke petition narrative which have not been submitted as part of the exhibits accompanying the narrative. These include council minutes, correspondence, court cases, newspaper articles, oral histories, and tribal correspondence. Please submit these materials as part of the documented petition (TRA#45)

Based on coding of TA passages there is no difference in the likelihood that petitioners later denied acknowledgment suffer from greater documentary gaps than successful petitioners. Petitioners later acknowledged are just as frequently perceived by OFA staff to suffer documentary gaps as unsuccessful petitioners.

By contrast, the passages coded as discussing explanatory weaknesses are far more common in the TA letters of petitioners denied acknowledgment. The 'explanatory gaps' code is applied to passages describing how documentary

evidence fails to satisfy a specific acknowledgment criterion. Broadly speaking, documentary gaps refer to an insufficient quantity of documentary evidence while explanatory gaps refer to passages describing qualitative deficiencies, that is, how they fail to establish that the requirements of a criterion are satisfied.

Of 16 successful petitioners, only 4 were deemed during the review phase to have submitted documentary evidence suffering from explanatory gaps. The second *TA* letter to the successful Jena Band of Choctaws, for instance, explains their failure to demonstrate a controlling political authority:

More elaboration is needed on the governmental system of the Jena Band past and present. If the "elders" governed informally prior to the creation of the Jena Band's formal governing body in 1974, we would like to have more specific examples of what their governing functions were considered to be within the community, i.e., how these individuals maintained political influence or authority over the group's members. Were there other important tribal positions besides chief? Was there an informal council of elders? Did the chief confer with others and/or seek a consensus before making decisions? What, if any, sanctions could the chief impose on those who ignored or rejected his authority/influence (e.g., ostracism or forced exile from the community)? Also, more description of the current leaders' interaction within the group would assist in understanding the role of the leader in relationship to the rest of the members of the Jena Band (*TA*#14)

The Golden Hill Paugusset Tribe in Connecticut were denied acknowledgment, in part because the documentary evidence they submitted did not satisfy the requirement of external identification under 83.7(a):

Your response to criterion (a) needs to be strengthened. Criterion (a) requires that outsiders have identified your group as American Indian on a "continuous basis." Accounts by scholars and local historians, the petition shows, have identified the Paugussett as an historical tribe during the colonial period. The petition also shows that newspaper accounts have

identified the Sherman/Piper family as American Indian during recent decades. What the petition needs is better evidence that links the historical Paugussett tribe with the modern Sherman/Piper family as a continuous Indian entity (*TA*#10).

Whether measured by case occurrence, code frequency, word coverage, or percentage of document covered by the code, there are no significant differences for any of the evidence themes in the codebook except for the perceived presence of explanatory gaps. OFA staff engages questions of authenticity and reliability, the touchstones of archival theorizing about documentary evidence, in the letters of both outcome groups equally. The average percentage of the *TA* letters of acknowledged tribes coded for explanatory gaps is 2.4% while the corresponding percentage for unsuccessful petitioners is 8.6% and this difference is significant (Pearson correlation, $r=-.301$, $p < .05$). Of all text coded as discussing explanatory weaknesses, 78.2% occurs in the *TA* letters of those later denied acknowledgment.

4.3.2 Documentation evaluations and source suggestions

A central function of the *TA* letter is to communicate guidance on potential sources of documentary evidence. Does the FAP privilege documentary evidence over other forms of knowledge and does it privilege documentary evidence from dominant institutions over those produced by petitioners when making suggestions? My analysis of the sources OFA recommends in *TA* letters shows that both impressions are largely accurate.

I coded for passages in *TA* letters in which the OFA staff provided suggestions of specific sources of documentary evidence. Almost invariably the suggestions are for textual documents and most are for documentary evidence produced or controlled by non-Indians. The basic framework of argument and proof imagined in *TA* letters is familiar to scholars because it reflects the norms of scholarship and legal opinions, with the expectation that claims are substantiated by the appropriate kinds of cited documentary sources. This is not surprising given the origins of the FAP, the functions it is designed to serve, and the academic backgrounds of the OFA professional staff.

This basic academic framework is described in a *TA* the letter recommending that the Eastern Pequots,

consider your first-edition narrative as a building block upon which to add material from other sources such as texts, journals, new stories, family letters, video interviews, and oral transcriptions. Pages one through three of the narrative can serve as a model of how to present documented material describing membership activities during a specific time period (*TA*#9)

The expectation that petitions reflect academic norms is a recurring theme in the way the OFA staff describe the relationship between the petition and supporting evidence. When *TA* letters seek documentary evidence from the petitioning group it is for the kinds of documents customary in bureaucracies and other centralized systems of governance. Across the corpus there is an implicit assumption, relatively explicit in the case of criterion (c), that a viable tribe maintained an IRA-style council producing meeting minutes and records of

decision-making and deliberation. For example, a letter requests “additional newsletters or minutes of the Confederacy's meetings not previously submitted with the petition. If minutes of individual clan meetings are available, these would also be helpful” (TA#41).

Oral histories and traditions can play a role in the FAP for criteria except external identification. Even so, of the 32 passages addressing oral traditions and histories 75% occur in the *TA* letters sent to unsuccessful petitioners. A letter to the Ramapough in New Jersey explains the subordinate position of oral evidence relative to textual documentation for some purposes:

However, while oral history might be used to provide an outline of the group's history, when documentation exists it should be used to support, expand or supplant the existing oral traditions. Oral history does not supplant the documentation (TA#40).

In addition to privileging textual documents and describing their inarguably important role, nearly all recommendations of specific sources point to dominant, non-Indian institutions. The Burt Lake Band of Ottawa and Chippewa Indians near Brutus, Michigan, for example, were encouraged to review existing oral history transcripts before conducting more interviews and were pointed to the Michigan State Archives for supportive documentary evidence:

We would be glad to confer with you further concerning sources of information for criterion b as well as criterion (c). The petition narrative indicates that oral histories pertaining to the period between 1917 and the present have already been done. We suggest that you review and evaluate these first, before doing further interview work. Another likely source of documentation is the state records held in the Michigan State Archives at

Lansing, particularly those of the State Indian Commission and its predecessors (TA#1).

TA letters often suggest petitioners continue research at archival institutions. For instance, the TA to the United Lumbee Nation of NC and America commented that “the National Archives appear to be one source of genealogical materials that has not yet been fully examined (TA#57:1; essentially same language in TA#62 and others).

TA letters sometimes invite comments on specific sources or particular claims that reference supporting documentary evidence. For instance, the letter to the Jena Band of Choctaws requests a “more complete description of leadership and other political processes between 1932 and 1975 and include supporting documentary or oral history evidence” and asks the petitioner to respond to a *New Orleans Times-Picayune* article in which an academic refers to the Jena as “leaderless” (TA#13:1) and invites a response from the petitioner.

4.3.3 Criteria failure in TA letters

When petitioners are denied acknowledgment it is most often because they do not satisfy 83.7 (a) external identification; (b) social proximity and cohesion; and (c)

Table 18: Criteria failure, by petitioner

PETITIONER	STATE	(a)	(b)	(c)	(d)	(e)	(f)
Poarch Band of Creeks	AL				×	×	
Principal Creek Indian Nation	AL	×	×	×			×
MaChis Lower AL Creek Indian Tribe	AL	×	×	×		×	×
MOWA Band of Choctaw	AL					×	
San Juan Southern Paiute Tribe	AZ			×	×	×	
Death Valley Timbi-Sha Shoshone Band	CA		×			×	
Kaweah Indian Nation	CA	×	×	×			×
United Lumbee Nation of NC and America	CA	×	×	×		×	×
Muwekma Ohlone Tribe of San Francisco Bay	CA	×	×	×		×	×
Munsee-Thames River Delaware	CO	×	×	×		×	×
Mohegan Tribe of Indians of the State of Connecticut	CT	×	×	×	×	×	×
Golden Hill Paugussett Tribe	CT		×	×		×	
Eastern Pequot Indians of Connecticut	CT		×	×			
Paucatuck Eastern Pequot Indians of Connecticut	CT		×	×			
Creeks East of the Mississippi, FL	FL	×	×	×	×	×	×
Lower Muskogee Creek Tribe-East of the MS	GA	×	×	×			×
Southeastern Cherokee Confederacy (SECC)	GA	×	×	×		×	×
Miami Nation of Indians of IN Inc.	IN		×	×			
Tunica-Biloxi Indian Tribe	LA					×	
Jena Band of Choctaws	LA			×	×	×	
Wampanoag Tribal Council of Gay Head	MA						
Mashpee Wampanoag	MA		×	×	×		
Nipmuc Nation (Hassanamisco Band)	MA	×	×	×		×	×
Webster/Dudley Band of Chaubunagungamaug Nipmuck	MA	×	×	×			×
Grand Traverse Band of Ottawa & Chippewa	MI						
Huron Potawatomi Inc.	MI		×	×		×	
Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians	MI		×	×	×		
Burt Lake Band of Ottawa and Chippewa Indians Inc.	MI	×	×	×		×	×
Ramapough Mountain Indians Inc.	NJ	×	×	×		×	×
Schaghticoke Tribal Nation	NY		×				
Yuchi Tribal Organization	OK					×	
Northwest Cherokee Wolf Band (SECC)	OR	×	×	×		×	×
Tchinouk Indians	OR	×	×	×		×	×
Narragansett Indian Tribe	RI					×	
Red Clay Inter-tribal Indian Band (SECC)	TN	×	×	×		×	×
St. Francis.Sokoki Band of Abenakis of Vermont	VT	×	×	×		×	×
Jamestown Clallam Tribe	WA					×	
Samish Tribe of Indians	WA	×	×	×	×	×	×
Snoqualmie Indian Tribe	WA			×		×	
Cowlitz Tribe of Indians	WA			×		×	
Duwamish Indian Tribe	WA	×	×	×			×
Chinook Indian Tribe.Chinook Nation	WA	×	×	×			×
Snohomish Tribe of Indians	WA	×	×	×		×	×
Steilacoom Tribe	WA	×	×	×		×	×

central political authority and influence. This is substantiated by the data depicted in Table 19 showing the share of *TA* letters from successful and unsuccessful petitioners coded as discussing these criteria in *TA* letters years before the decision. Only explanatory gaps and the share of successful petitioners coded for failing on these three acknowledgment criteria differ significantly from the share for unsuccessful petitioners. What this means, in essence, if perhaps unsurprisingly, is that there is a statistically-significant relationship between the presence of codes for discussions of these themes and acknowledgment outcomes. Further, as my analysis makes clear, there are systematic differences in the interpretation of these criteria and documentary evidence as expressed in the *TAs* of successful as compared to unsuccessful petitioners. My purpose in this exploratory study is to discern if differences exist more than determine whether they arise because of differences in documentary evidence or differences in OFA interpretation. Table 18 lists each of the petitioners and the criteria each petitioner was deemed by OFA to have failed to satisfy during the FAP review phase.¹⁷

Table 19 indicates the failure rates for each criterion across the *TA* letters and the frequency and percentage of *TA* success and failure by criterion. A majority of petitioners were initially perceived as failing to satisfy criterion (f) requiring they demonstrate their members were never members of other

17. Criterion 83.7(g) is removed from analysis because it was proven by every petitioner receiving a final determination.

recognized tribes but nearly all were able to satisfy this criterion before receiving a final determination.

Table 19: TA evaluations, by criteria and outcome

83.7	TA EVALUATION	ALL		ACKNOWLEDGED		DENIED	
		N	%	N	%	N	%
(a)	Satisfied	21	47.7	14	87.5	7	25.0
	Failed	23	52.3	2	12.5	21	75.0
(b)	Satisfied	12	27.3	10	62.5	2	7.1
	Failed	32	72.7	6	37.5	26	92.9
(c)	Satisfied	10	22.7	7	43.8	3	10.7
	Failed	34	77.3	9	56.3	25	89.3
(d)	Satisfied	35	79.5	11	68.8	24	85.7
	Failed	9	20.5	5	31.3	4	14.3
(e)	Satisfied	13	29.5	4	25.0	9	32.1
	Failed	31	70.5	12	75.0	19	67.9
(f)	Satisfied	21	47.7	14	87.5	7	25.0
	Failed	23	52.3	2	12.5	21	75.0

Documentary evidence from unsuccessful petitioners is far more likely viewed during review as failing to satisfy 83.7 criteria (a), (b), and (c). In the following analyses of the criteria I introduce crucial interpretative issues revealed in passages excerpted from identified TA letters. The passages are illustrative not representative.

4.3.4 External perceptions 83.7(a)

Criterion 83.7(a) requires external identification as an “American Indian entity” [83.7(a)]. This research confirms the disproportionate importance of external identification in the early phases of the acknowledgment process. To a substantial degree the FAP pivots on this criterion because if that hurdle is cleared a petitioner’s chances are relatively strong whatever the preliminary evaluation for the other criteria. If during the preparatory phase a petition is perceived as weak for criterion (a) the petitioner is highly unlikely to secure acknowledgment years later.

A crucial fact about 83.7(a) is that evidence from the petitioner is barred because “internal or self-identifications...are not acceptable as evidence” (TA#9: 3). Satisfying 83.7(a) has three elements: (1) identification as American Indian; (2) by entities or individuals not a part of the petitioning tribe; and (3) that external identification is continuous. In the earliest period petitioners were required to satisfy criterion (a) on a continuous basis since the time of first contact but since 1994 petitioners are required to show continuity since 1900.

The full text of 83.7(a) now reads [25 C.F.R. 83.7(a)]:

The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group’s character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met.

The OFA *Precedent Manual* provides guidance to petitioners about how the OFA staff interprets acknowledgement criteria, including definitions of key terms and phrases from *TA* letters, and the *Proposed Finding*, and *Final Determination* documents. Continuous recognition requires that petitioners provide “evidence that the group was identified on a prolonged and repeated basis by recognized Indian tribes, governmental agencies, scholars” (Office of Federal Acknowledgment 1981). Criterion (a) specifies six types of documentary evidence capable of satisfying the criterion. Petitioners need not provide evidence from all six sources and no one type is required to demonstrate continuous external identification.

Identification of evidentiary weaknesses by OFA staff during the preparatory phase for 83.7(a) is a better predictor of future acknowledgment outcomes than other criteria. Nearly half of the petitions (21) were deemed as providing sufficient documentary evidence to satisfy the criterion. Ultimately, 14 of these (66.7%) were acknowledged and 7 denied on other grounds. Of the 23 petitioners with *TA* letters communicating perceived documentary weaknesses for to criterion only two were later acknowledged. There is very little chance of recovery from a preliminary assessment the external identification requirement is not satisfied: More than 9 in 10 petitions (91.3%) perceived during the preparatory stage as failing the external identification criterion were denied acknowledgment.

Consider the contrast with criteria 83.7(b) on community and 83.7(c) on political authority, both failed at a higher rate during review than 83.7(a). Petitioners failing to meet these criteria during the review phase had a greater chance of future acknowledgment than those failing (a). The criteria (b) and (c) are daunting obstacles but they are more easily cleared than external identification. For instance, 25 of the 32 petitioners whose documentary evidence was deemed weak for criterion (b) were later denied acknowledgment (81.3%) and 25 of the 34 (73.5%) failing 83.7(c) were denied acknowledgment. These are high percentages but they do not approach 100.0%.

Because all 25 of the petitioners failing both (b) and (c) also failed (a) the likely importance of external identification is greater still. Of the 9 petitioners viewed as failing 83.7(b) and/or (c) while also satisfying (a) during the review phase 5 were denied acknowledgment. Even though there is a relatively low success rate for petitioners deemed during review as failing to satisfy 83.7(b) or (c) some of that failure is attributable to criterion (a); almost half of the petitioners viewed as satisfying (a) but failing (b) and (c) were ultimately successful.

Given the critical influence of 83.7(a) during review what kinds of sources are deemed useful and how do they differ between the two outcome groups?

As *TA* letters became more expansive since the mid-1980s they provided greater clarity about sources acceptable for satisfying 83.7(a). For instance, by the mid-1990s many *TA* letters began to include language detailing a list of “six kinds

of sources which may be relied upon to demonstrate a group's continuous existence" that included federal, state, and local government sources, as well as the work of academics, newspapers, books, and other tribes and national tribal organizations (TA#24). A more recent TA gave even more specific language:

Criterion 83.7(a) requires proof of the external identification of your group as an American Indian entity since 1900. The acceptable documentation includes identification as an Indian entity by Federal authorities, relationships with State governments based on identification of the group as Indian, dealings with a local government, identification by anthropologists, historians, and/or other scholars, and identification in newspapers and books, or in relation with other tribes and Indian organizations. It is not necessary to have all of these types of documentation, but documentation of one kind or another must be available on a regular basis (TA#6:7).

The language that was ultimately codified in the *Precedent Manual* establishes external identification as the only criterion for which acceptable documentary evidence is prescribed:

1. Identification as an Indian entity by Federal authorities;
2. (Relationships with State governments based on identification of the group as Indian;
3. Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity;
4. Identification as an Indian entity by anthropologists, historians, and/or other scholars;
5. Identification as an Indian entity in newspapers and books;
6. Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations"[59 F.R. 9293]

In chapter 3 I analyzed metadata for 126,000 documents submitted as evidence. That analysis identified some significant differences in the composition

of the documentary evidence by source and some of those differences are likely a function of petitioners' efforts to satisfy criterion (a). My analysis shows that perceived differences in satisfying the external identification criterion are sufficient to predict future failure and if that criterion is satisfied during review petitioners face no worse than a fair chance of future acknowledgment.

4.3.5 Distinct community 83.7(b)

To satisfy 83.7(b) the petitioner must prove the substantially continuous existence of a central political authority. One technical assistance letter explains that the 'political influence or authority' language in 83.7 (b) means "there were in the past, and are now, leaders who have followers whom they influence and who influence them in significant ways" (TA #62). To meet the requirement the petitioner must demonstrate the existence of a

... political connection between the membership and leaders and thus that the members of the group and its leadership maintain a bilateral political relationship. This connection must exist broadly among the membership. It has sometimes been phrased that not only must there be leaders, but there must also be followers. (TA #62)

The same letter observes that while a degree of sensitivity to cultural differences and historical circumstances is permitted when analyzing documentary evidence for the criterion "when a petitioner is evaluated, the fact that it no longer has a land base, controls significant resources, and is subject to the legal and political institutions of non-Indian society, may inform the

evaluation” but cannot justify setting aside the requirement for “some form of significant political authority, leadership, and decision-making” (TA#24).

To demonstrate the existence of a distinct community it “is important to document -- where documentation exists -- the formal and informal aspects of community life since 1848” one letter reads, pointing toward “elements of community life” such as in-group marriage, “social relations, informal interaction, cooperative labor activities, patterns of discrimination, and rituals” (TA#9). Given the kinds of activities proving the existence of a distinct community establishes presumptive weight for some types of documentary evidence over others. The second TA letter to the Muwekma-Ohlone near San Francisco recommends documentary evidence in the “letters, group newsletters, oral interviews, or from copies of signed guests lists from funerals, marriages, graduation parties, meetings, etc...” (TA #24).

4.3.6 Political structure 83.7(c)

In the acknowledgment literature the requirement that petitioners demonstrate a central political authority is the object of more criticism than any criterion other than (a) external identification. As explored in the review of the literature in Chapter 2 a major reason is that many of the assumptions about what constitutes ‘legitimate tribes’ reflect political structures, processes, and norms

familiar to members of the dominant society and the professionals at the OFA, including those writing controlling the substance of the regulations.

Slagle (1989) argues that requiring documents proving the uninterrupted exercise of central political authority imposes lethal burdens on the California tribes he studies:

Relatively small tribes and bands, particularly in rural areas, survived to continue or resume political functions after their traditional lands became less attractive sites of economic activity and settlement for non-Indians. Such groups comprise the majority of candidate groups for acknowledgement. Extant records and documents of the kind which the ARB considers essential to proving continuity of tribal identity of such California Indian tribes are difficult to assemble, even those covering the post-1850 historical period, because of the rapid and drastic decimation or dispersal of large portions of many California Indian tribes, the indifference of early non-Indian observers, and the like. A gap of more than twenty years in the strand of evidence demonstrating substantially continuous tribal governmental activities can be fatal to a petition, under the present process and the Branch's interpretation of the regulations, although the impossibility of proof has little or nothing to do with free political choice or voluntary cessation of active cultural activities on the part of any historical California tribe (Slagle 1989).

The *Proposed Finding* against recognition for the Muwekma Ohlone Tribe of San Francisco Bay states the petitioner failed to prove the exercise of political authority over members by demonstrating “‘substantially continuous historical identification by authoritative, knowledgeable external sources,’ of named leaders who exercised political influence or authority within the group, or of a governing body which did so” (*Proposed Finding* on the Ohlone/Costanoan Muwekma Tribe, 30 July 2001). This *Proposed Finding* cites language from the *Precedent Manual*.

The *TA* letter to a successful Northwest petitioner reads that the claims of the petitioner for (c) could be “greatly enhanced if more detail could be provided concerning the leadership and political processes within the group and how the group evolved from the original bands and villages” adding that they “may find it useful to refer to pages 9-11 of the guidelines for preparation of a petition” (*TA*#47: 1).

4.3.7 Membership document 83.7(e)

The stakes for petitioners submitting a membership list to satisfy criterion 83.7(e) are great because if they are later acknowledged that list becomes their base roll. A disproportionate share of the existing research on acknowledgment in dissertations in effect analyzes whether and how individuals appear on this list and how those on this list are perceived by local non-Indians and OFA staff.

The primary focus of acknowledgment researchers have centered on questions of identity, in particular, internal struggles over membership and the obstacles posed by external perceptions of the identity. Defining group membership is often highly political, inflammatory, and emotional as it cuts to the core of questions of identity (Burgess 2004, Gonzales 2002). One *TA* letter informs a petitioner they must provide “a current list of those who are considered members of the group, with current addresses, preferably on the forms included in the guidelines” and that they must also produce “genealogical charts and

possibl[y] some genealogical documentation” (TA#47:1). The criterion requires the petitioner explicitly identify members and those persons must “descend from a historical Indian tribe” or tribes functioning as a “single autonomous entity” [25 C.F.R.(83.7(e))].

Documentary evidence tending to satisfy this criterion includes federal records showing ancestors receiving money as part of the Indian Claims Commission, distribution of allotments, tribal rolls, or other “state, Federal, or other official records” establishing that an ancestor was recognized as a member of a tribe once recognized” (Office of Federal Acknowledgment 2005:216). Church and school records for ancestors are also frequently deemed satisfactory, judging by evaluations of documentary evidence provided in *TA* letters.

Existing research suggests that criterion 83.7(e) is among most contentious within petitioning communities. The two Nipmuck Nation petitioners with identical case files, for instance, differ only in that the earlier petitioning group listed 1602 members reduced by the second petition to 212 due to internal conflicts and documentary challenges arising with some members of the larger group. However challenging it is for petitioners to satisfy 83.7(e) it is one that successful and unsuccessful petitioners encounter in roughly equal measure during the preparatory phase and usually overcome by time of their final determination.

Most petitioners ultimately satisfy this criterion whether or not they are acknowledged. Ten petitioners (29.5%) were deemed during the preparatory

phase to have satisfied criterion 83.7(e) but ultimately 27 petitioners (61.4%) satisfied the criterion by the time they received a final determination. In other words, earlier research about acknowledgment in the main focuses on questions of identity and tribal membership which, however interesting, are not among the most challenging criteria to satisfy, at least among those receiving a final determination. Questions if identify inviting the attention of other researchers may be important not for outcomes. By the time they receive a final determination, nearly all petitioners prove their members satisfy 83.7(e).

If anything the OFA staff is more likely to find problems regarding criterion (e) among petitioners later deemed successful than petitioners deemed during review as satisfying the criterion. The failure rate for successful petitioners is 75% while the rate for unsuccessful petitioners is 67.9%, the only criterion for which the failure rate is higher for successful petitioners. Perhaps OFA staff anticipates a greater chance of future success for those petitioners and therefore scrutinizes submitted membership lists more closely. Alternatively, petitioners struggling to secure documentary evidence for the more challenging criteria could devote more resources and efforts toward satisfying comparatively easy criteria.

4.3.8 Other acknowledgment criteria

Except as part of the MCA below I make little attempt in this exploratory study to examine 83.7 criteria (d), (f), and (g). As previously described, no petitioner failed

criterion (g). As captured in *TA* letters, 9 petitioners were perceived by OFA staff to have failed criterion (d) requiring a governing document and 23 were perceived to have failed criterion (f) requiring proof that members were not previously enrolled in a federally-recognized tribe. While some petitioners faced challenges with respect to 83.7 (d) and (f) they are not closely analyzed because they are rarely the focus of extended analysis in *TA* letters and are easily satisfied by nearly every petitioner, though they are the source of a majority of specific document requests by the OFA. Ultimately only 1 petitioner failed 83.7(d) and only 4 failed (f) in their *Final Determination* documents.

4.3.9 What distinguishes *TA* letters of successful petitioners?

The normalized term frequency distributions in the 62 *TA* letters can be compared to the Open American National Corpus, a database of the frequency distributions for nearly 15 million American English words drawn from an enormous variety of spoken (3.2 million words) and textual (11.4 million words) sources from such domains as government, scientific and technical fields, popular culture, personal correspondence, and others.¹⁸

Terms appearing in *TA* letters in statistically-significant greater or lesser frequency than in American English, as represented by the OANC, provide a linguistic view of *TA* letters at the term-level. This compares the number of words

18. Description and downloads available at: <http://www.americannationalcorpus.org/>

in the focal corpus to their expected frequency in English. This method identifies 881 words distinguishing *TAs* because they appear either more or less than mere chance would suggest for an American English document. Most of the significant terms speak to the function of the *TA* letter in the specific acknowledgment context.

Table 20: The 20 most common distinguishing *TA* terms

TERM	FREQ	% WORDS	% TAs	*OBSERVED-EXPECTED
petition	1034	1.1	100.0	1033.3
group	962	1.1	88.6	903.7
member	574	0.6	84.1	547.7
Indian	521	0.6	93.2	514.3
provide	556	0.6	90.9	503.5
membership	469	0.5	88.6	466.5
list	462	0.5	84.1	441.9
acknowledgment	414	0.5	90.9	413.7
criterion	380	0.4	61.4	370.9
review	387	0.4	90.9	359.3
tribe	328	0.4	79.5	326.2
tribal	323	0.4	88.6	321.8
community	333	0.4	63.6	313.3
document	309	0.3	77.3	297.3
information	347	0.4	93.2	294.1
roll	298	0.3	77.3	292.3
letter	298	0.3	88.6	284.2
submitted	270	0.3	84.1	266.0
consideration	255	0.3	86.4	250.8
staff	252	0.3	90.9	239.9
*All differences in the final column are significant, $p < .0000$, 2-tails				

For instance, 'petition' is the term with the largest difference between observed and expected term frequencies and other terms include membership, document, etc.

Table 21: The 20 least common distinguishing TA terms

TERM	FREQ	% WORDS	% TAS	*OBSERVED-EXPECTED
level	15	0.0	13.6	-42.1
world	4	0.0	4.5	-44.1
great	11	0.0	20.5	-44.7
control	14	0.0	22.7	-44.9
house	13	0.0	9.1	-45.4
analysis	14	0.0	13.6	-46.9
lead	3	0.0	4.5	-47.1
change	16	0.0	25.0	-48.2
story	3	0.0	4.5	-50.9
report	41	0.0	34.1	-51.4
result	26	0.0	29.5	-51.9
day	28	0.0	29.5	-52.7
make	94	0.1	54.5	-59.4
sequence	5	0.0	4.5	-59.9
people	53	0.1	36.4	-64.1
study	21	0.0	22.7	-73.3
high	10	0.0	9.1	-74.5
year	79	0.1	56.8	-75.6
thing	3	0.0	4.5	-96.9
good	11	0.0	9.1	-145.3
*All differences in the final column are significant, $p < .0000$, 2-tails				

The 20 terms in greatest relative surplus are listed in Table 20 showing the number of times it appears in *TAs*, its share of all words in the corpus, the percentage of *TA* letters with the term, and the value of the observed minus the expected frequency given the distribution of the term in the OANC. Table 21 provides data about the 20 terms least common relative to expected frequencies given English as the baseline comparison. All differences are significant ($p < .0000$). There are really no surprises in these data but they demonstrate the linguistic patterns characterizing *TA* letters as a distinct genre of communication (Yates and Orlikowski 1992).

4.3.10 What distinguishes the *TA* letters of successful petitioners?

Are there systematic differences in the linguistic profiles of the *TA* letters of successful and unsuccessful petitioners? One way to detect linguistic difference is to select passages for which thematic coding identified significant differences and extract terms in those passages. Then it is possible to determine which of those terms are significantly more or less likely to appear in the letters to successful petitioners. The result is data that, for example, identifies the individual terms in *TAs* that may distinguish successful from unsuccessful petitioners. There are no significant differences in the presence of any evidence sub-code apart from “explanatory gaps”. The analysis in this section identifies those terms found in *TA* passages coded for themes of interest that distinguish successful and unsuccessful

petitioners. Retrospective identification of terms appearing in significantly different frequencies to either outcome group is merely suggestive and does not demonstrate their presence or absence predicts or explains future outcomes. But that research is possible! In this analysis I ignore terms that may help understand the letters sent to either group where there is no statistically-significant difference in distribution across the letters.

I selected all the passages from the *TA* letters for which there were significant coding differences and then extracted the top-300 terms by frequency that appear at least twice overall across at least two distinct petitioners.

Table 22: Significant term differences in TA letters

CODE	NO. TERMS	% IN TAS OF ACK
83.7 (a)	126	71.4
83.7 (b)	46	78.3
83.7 (c)	64	67.2
Explanatory gaps	104	16.3
Document evaluation	73	8.2

Tabulating these relatively high-frequency terms against the binary outcome identifies the number of terms appearing in significantly different frequencies in letters to successful petitioners. For instance, the data in Table 22

show that the normalized frequency distribution of 126 specific terms in the TA letter of petitioners differ significantly by outcome. The final column in Table 22 shows the share of the significant terms appearing more frequently in the TA letters of successful petitioners. Roughly 70% of the significant terms extracted from the passages coded for weaknesses in acknowledgment criteria appear more frequently in TA letters sent to tribes later acknowledged. These terms effectively represent the lexicon of perceived success, at least ultimate success. The data reported in Table 23 are the significant term frequencies extracted from the coded passages distinguishing the TA letters of the two outcome groups. These are the terms OFA staff use to distinguish successful and unsuccessful petitioners in instances where their documentary evidence is perceived differently.

Normalization uses the frequencies from the entire dictionary of included terms.

Table 23, along the left side, reports the 10 most frequent *significant* terms, where significance is measured as a two-tailed Pearson correlation of significant normalized term frequencies and outcomes for passages coded as deficient for criteria (a). Terms across the entire table are ranked by the ratio of the normalized term frequency in the TAs of acknowledged petitioners (A) divided by that for petitioners denied acknowledgment (D). This A/D ratio is a measure of the relative concentration of the significant terms in the TA letters of the two outcome

Table 23: Significant linguistic differences by coded passages

Code	<u>83.7 ACKNOWLEDGMENT CRITERIA</u>						<u>DOCUMENTATION</u>	<u>EVIDENCE</u>		
	(A)	(B)	(C)				EVALUATION	EXPLANATORY		
Terms more common in TAs of successful petitioners										
Rank	Term	A/D**	Term	A/D**	Term	A/D	Term	A/D**	Term	A/D**
1	member	3.5	period	4.0	material	3.0	Information	3.3	maintain	3.5
2	action	3.3	material	3.0	description	2.3	Community	2.7	specific	3.0
3	federal	2.8	description	2.0	include	2.0	Petition	2.3	function	3.0
4	past	2.5	information	2.0	information	2.0	Documentation	2.0	newspaper	3.0
5	claim	2.5	require	2.0	consensus	2.0	Provide	1.6	description	2.5
6	tribal	2.5	discuss	2.0	detail	2.0	Evidence	1.3	discussion	2.5
7	existence	1.7	federal	2.0	discuss	2.0			include	2.3
8	require	1.3	function	2.0	band	2.0			informal	2.0
9	tribe	1.1	include	1.7	deficiency	2.0			additional	2.0
10	petition	1.1	provide	1.6	reference	2.0			submit	2.0
Terms more common in TAs of successful petitioners										
Rank	Term	A/D**	Term	A/D**	Term	A/D	Term	A/D	Term	A/D
1	documentation	0.2	significant	0.5	kind	0.5	Indian	0.1	Indian	0.4
2	time	0.3	band	0.5	tribe	0.7	Include	0.2	present	0.4
3	source	0.3	organization	0.7	petition	1.0	Page	0.3	tribal	0.4
4	identification	0.3	event	0.7	leadership	1.0	Copy	0.3	evidence	0.4
5	Indian	0.4	social	0.7	membership	1.0	Tribal	0.3	provide	0.4
6	American	0.5	institution	1.0	chief	1.0	Present	0.3	document	0.5
7	century	0.5	issue	1.0	base	1.0	List	0.4	describe	0.7
8	describe	0.5	attend	1.0	discussion	1.0	Membership	0.5	information	0.7
9	kind	0.5	cohesion	1.0	significant	1.0	Member	0.7	membership	0.7
10	narrative	0.5			part	1.0	Document	0.7	community	0.8

*Significant terms appear in significantly different frequency in TAs by outcome in a corpus defined by specific coded passages.

**A/D is the ratio of the normalized term frequency in TAs of acknowledged divided by denied petitioners.

groups. A ratio > 1.0 means the significant terms are relatively concentrated in the TAs to tribes later acknowledged. The significant terms concentrated in letters to acknowledged tribes are listed in rank order by A/D ratio in the top half of Table 23 while the significant terms with the smallest A/D ratio, those relatively concentrated in letters to those denied acknowledgment, are listed in the bottom half. Where there are fewer than ten terms in a list (e.g., evaluation of documentary evidence) it is because there were fewer than 10 significant terms appearing more or less frequently in letters to successful tribes.

4.3.11 Multiple Correspondence Analysis (MCA) of petitioners and criteria

The interpretative heart of MCA is the creation of a joint map of the cases and the values of the categorical variables. Row categories, here the 44 petitioners, that are proximate on a 2-dimensional map have similar row profiles meaning their distributions on the levels of the categorical variables are more similar. The levels of different categorical variables that are proximate tend to appear together in the cases.

To illustrate, imagine a binary gender variable with the two values or levels male and female. An indicator matrix would transform a single gender variable with the values M and F (say) into a column for male and a column for female. A male would have a value of 1 in the male column and 0 in the female column. Now imagine a three-level categorical variable for height where each person is

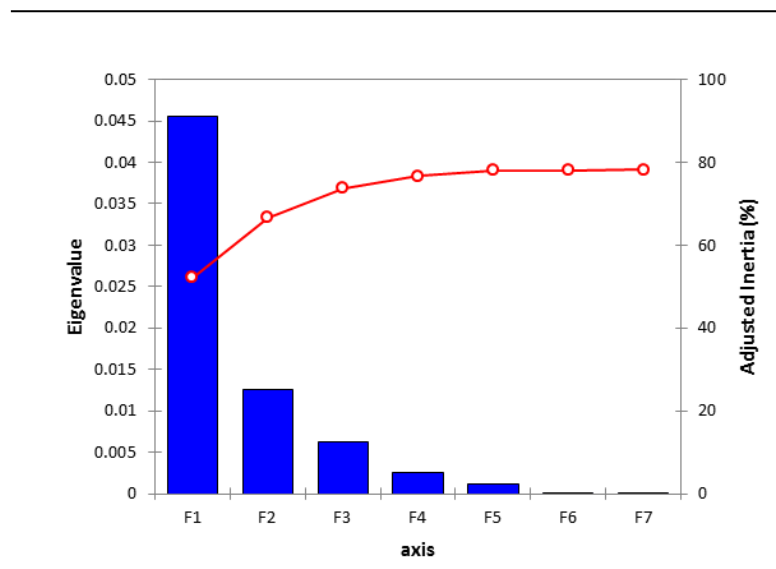
short (1, 0, 0), medium (0, 1, 0), or tall (0, 0, 1). If the gender value “male” tends to appear in persons (cases) that also have the value “tall” then the value (level) “male” for the gender variable will be mapped closely to the height value (level) “tall”. Conversely, persons appearing close together have more similar distributions across the values in the columns. For instance, in the current research petitioners appearing close together tend to have similar values across the acknowledgment criteria and the other categorical variables. When two or more levels of the same categorical variable are proximate it means the cases associated with them are similar (Abdi and Valentin 2007).

Following Greenacre (1993) MCA in XLSTAT calculates an adjusted inertia based on eigenvalues that corrects for the artificially inflated solution space that otherwise arises because the levels of the categorical variables require multiple columns, artificially adding dimensions. Factors with eigenvalues greater than $1/p$ where p is the number of categorical variables are calculated and typically the two factors with greatest inertia are used to create the x and y-axes of a 2-dimensional bi-plot.

The top two factors produced by this method account for 66.59% of the inertia (think variance) in these data as shown in the scree plot in Figure 5. Identified in the scree plot as F1 and F2 these two dimensions are used as the two axes in the plots in Figures 6, 7 and 8. I believe MCA is most appropriate for exploring relationships between categorical variables and for identifying areas

suitable for future research. Nonetheless, the XLSTAT MCA module generates a χ^2 -based significance statistic that identifies variable levels significantly associated with the dimensions (see Appendix G). I discuss the results of these tests below.

Figure 5: Scree plot of MCA factors



More generally, we should reject the null hypothesis that the rows and columns are independent because the square root of the inertia is 1.195 and by convention any value over 0.2 indicates a dependence between the rows and the columns (Bendixen 1996). While not surprising, this is fortunate because it implies a strong relationship overall between the columns (the values for the acknowledgment variables) and the rows (the 44 petitioners). Of greater analytic importance is that the first dimension (F1) is significantly correlated to petition outcomes (see Appendix G). This means that individual variable levels scoring

high on the F1 dimension tend to be associated with acknowledgment success while those scoring negatively on the dimension are associated with failure.

Figure 6, 7 and 8 provide insight into federal acknowledgment and point toward opportunities for future research. Figure 6 is the bi-plot of the petitioners and the levels or values of the categorical variables. While not included in significance calculations, factor calculations, or calculating coordinates, I have used the binary or two-level variable acknowledgment outcome (Ack or Denied) as a supplementary variable showing its location relative to the other variables. In this way we can intuit visually the categorical variable values most closely associated with successful outcomes. Even though the rows (petitioners) and columns (levels of categorical variables) are highly dependent, and therefore the bi-plot is open to joint interpretation, I provide separate plots for petitioners in Figures 7 and for the levels of the variables in Figure 8 that would look like the bi-plot in Figure 6 if mapped together.

Explaining the meaning of dimensions in MCA is difficult in much the same way that explaining the substance of factors in factor analysis can prove vexing. One reason is that the MCA approach is data-driven, attempting to interpret data to uncover anomalies and generate additional research and new

Table 24: MCA case variables

VARIABLE	LEVELS	FREQ.	%
TA CRITERIA EVALUATION			
83.7(a)	UNMET	23	52.3
	MET	21	47.7
83.7(b)	UNMET	32	72.7
	MET	12	27.3
83.7(c)	UNMET	34	77.3
	MET	10	22.7
83.7(d)	UNMET	8	18.2
	MET	36	81.8
83.7(e)	UNMET	30	68.2
	MET	14	31.8
83.7(f)	UNMET	32	72.7
	MET	12	27.3
Appeal	UNMET	32	72.7
	MET	12	27.3
TIMING			
Petition initiation	70s	27	61.4
	80s	17	38.6
Final decision	00s	16	36.4
	80s	18	40.9
	90s	10	22.7
1 st TA letter	70s	9	20.5
	80s	22	50.0
	90s	13	29.5
GEOGRAPHY			
Other petitioners in the state	NO	9	20.5
	YES	35	79.5
Region: Midwest	MW	5	11.4
Northeast	NE	12	27.3
South	SO	11	25.0
West	WE	16	36.4
RACIAL HYBRIDITY			
Black-Indian greater than national average?	NO	25	56.8
	YES	19	43.2
White-Indian greater than national average?	NO	14	31.8
	YES	30	68.1
GAMING			
Casino in ZCTA-3?	NO	21	47.7
	YES	23	52.2

theories and is not a top-down approach fitting a model on data. Interpreting the dimensions in MCA rests on an informed analysis of the geometry of the variables to infer plausible explanations worthy of further investigation. This interpretative task is aided by several measures generated in MCA implementation in XLSTAT. These include a squared cosine measure of similarity and a table identifying significant relationships to the dimensions using a χ^2 statistic.

Recall that MCA is a geometric representation of the relationships of the levels of categorical variables and the cases. Each variable level and case is represented as a vector in an m -dimensional space where m is the number of levels of the categorical variables, minus 1. Vectors with high cosine values are more similar to the dimension in question. Variables are significant (see Appendix G) where the null hypothesis that there is no difference in the distribution of their levels relative to the dimension (factor) merits rejection.

The first factor (F1 meaning the first factor, ranked by inertia value) in the Figures 6, 7, and 8, is significantly associated to petition outcomes and alone explains more than half the inertia (52.21%). This is represented visually in Figure 7, where I have circled two clusters with nearly all the successful petitioners ('+' beside the number) on the right of the x-axis with positive values while most failing petitioners have negative values ('-' next to the petitioner number). This fact alone gives face validity to this MCA because it means the dimension cleanly

differentiates petitioners by outcome without outcome data included in calculations.

I label this factor “external perceptions” because closer analysis reveals that it is the 83.7 criteria (a), (b), and (c) that are significantly correlated with the dimension (Appendix G) *and* their vectors are most similar to the F1 dimension (high cosine values; see Appendix H). This means that these three variables are the most similar to the F1 dimension and they are significantly related to outcomes. Dimension F2 (y-axis) is less discriminating for outcome, though successful petitioners cluster around the y-axis, meaning they are closer to the “average” row profile for that dimension while the extreme positive and negative scores are found in petitioners denied acknowledgment.

Petitioners mapped closer together have more similar row profiles. For instance, petitioners 35 (Snoqualmie) and 42 (Wampanoag Gay Head), both acknowledged, are more similar than either is to petitioner 27 (Poarch Creek), also acknowledged. Similar here means they have similar profiles across the values of the categorical variables. The Schaghticoke (33) and the Paucatuck Eastern Pequots (26) were both denied acknowledgment but are more similar to each in terms of than they are to the Duwamish (6). Future research should explore whether apparent similarities among these petitioners are a function of some identifiable factor.

More interesting are relationships among the several categorical variables depicted in red in the bi-plot in Figure 6 and in Figure 8. Because positive scores on F1 in nearly all instances point to a successful outcome, a conclusion supported by the placement of the supplementary outcome variable, several interesting relationships are suggested by this analysis. First, examine the placement of the acknowledgment criteria in Figures 6 and 8. Positive scores along the F1 dimensions (x-axis) are scored for satisfying 83.7 criteria (a), (b), and (c) in *TA* letters. By contrast, petitioners that are later denied acknowledgment are more likely to have received positive evaluations for 83.7(d) and (e) during the review phase. It is impossible on these data to determine why these relationships hold but some speculation is in order.

Earlier I showed that differences in the evaluation of documentary evidence for the 83.7 criteria (a), (b), and (c) predict future acknowledgment outcomes. The MCA analysis here strongly supports that finding. Both methods reveal a negative relationship between satisfying 83.7 (d) and (e) during the review phase and future acknowledgment success. Perhaps petitioners appreciate that documentary evidence is lacking for (a), (b), and (c) and they invest more in satisfying (d), (e), and (f) during preparation. Alternatively, perhaps the OFA staff appreciate that petitioners perceived in *TAs* as satisfying the three “external documentation” criteria and more likely to achieve acknowledgment and therefore they receive more critical attention during the review phase for (d) and (e). These data do not

provide a definitive answer but they do suggest important areas for future research.

What role if any does race play? Using admittedly crude measures of racial hybridity (though probably the best available), I find that self-identification of mixed White-American Indian ancestry at a rate higher than the national average is scored positively on F1 but the opposite is true for average reported Black-American Indian self-identification, complicating one belief about the role of race discussed in the literature while lending support for the view that intermarriage with Black Americans is disadvantageous. This MCA suggests that where petitioners live in areas with more self-identified Black-American Indians they are less likely to receive acknowledgement. The existing acknowledgment research suggests that where petitioners are perceived as “too White” they are more likely to fail to achieve acknowledgment. These data do not challenge the particular instances where researchers have found this association, principally in the Northeast. They do show, however, that greater levels of self-identification as White-American Indian is not associated acknowledgment failure overall.

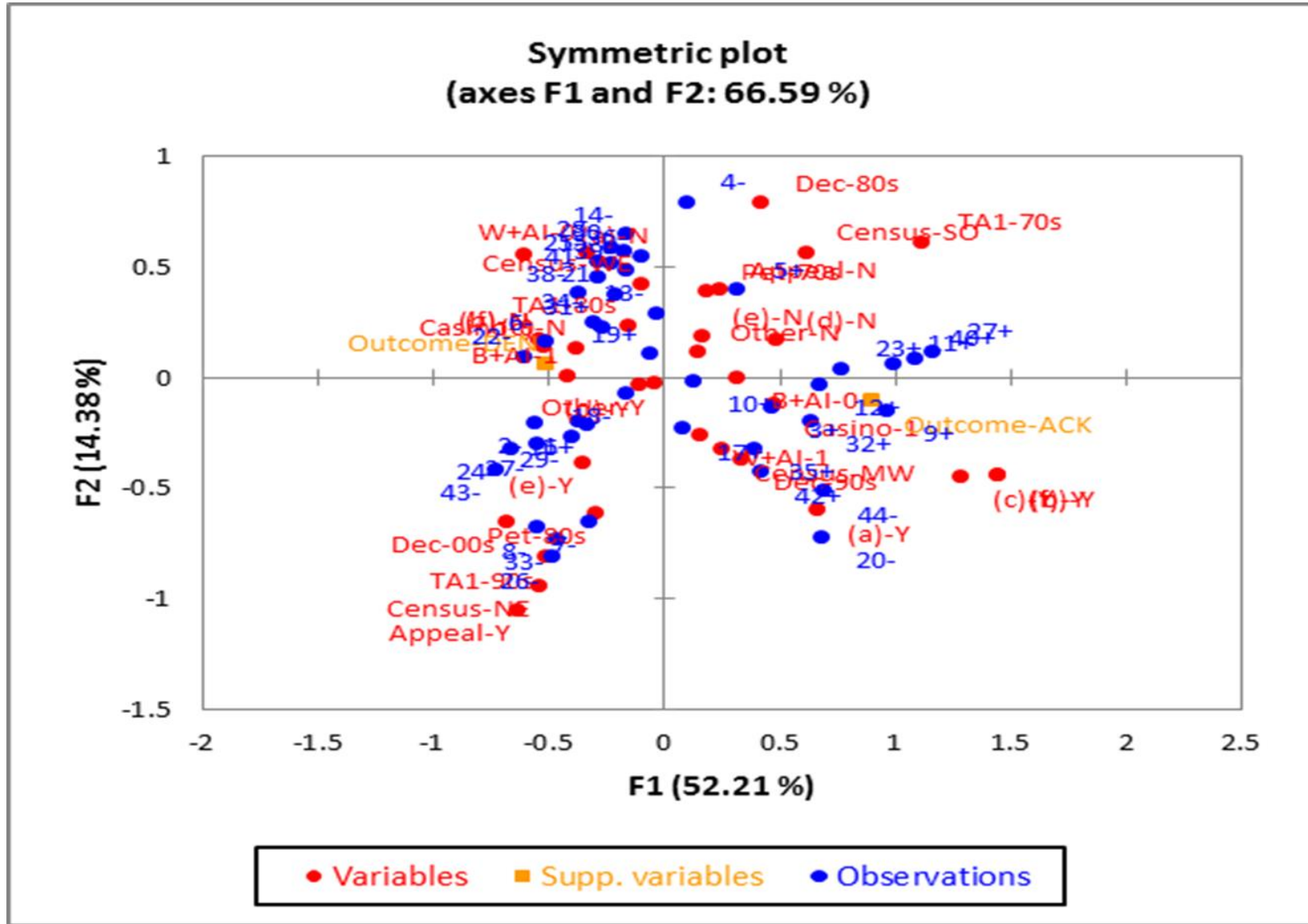
My MCA indicates geography might play an important role and merits further investigation. Along the F1 dimension, petitioners from the Midwest and the South receive high scores compared to petitioners from the West and the Northeast. There are unsuccessful petitioners in all four Census Regions but there is a higher ratio of successful petitioners in the South and the Midwest. The

presence of another FAP petitioner in the same state scores negatively on the dimension and is therefore associated with petition failure. The presence of a casino within the same ZTCA3 as a petitioner is associated with a positive outcome but that could merely indicate that successful petitioners tend to build casinos (the variable measures current casino presence).

Finally, it appears there is a temporal component to outcomes given scores on the F1 factor for the various levels of the timing of the petition, the first *TA* letter (*TA1*), and the date of a final decision. Petitioners initiating their petition earlier, receiving their first *TA* letter earlier, and receiving a final determination earlier, tend to score higher on the F1 dimension. Petitioners starting in the 70s¹⁹ or 80s and receiving their first *TA* letter in the same decades with cases were decided in the 80s or 90s receive higher F1 scores than those starting in the 80s, those receiving *TA* letters in the 90s, and receiving decisions in 00s. While hardly definitive, this MCA lends empirical support for the view that federal acknowledgment has become more challenging over time.

19. Two petitioners with petition dates prior to the 1970s, specifically 1978, were coded into the 1970s category to avoid creating a cell with a value less than 5.

Figure 6: Bi-plot of petitioners (blue) and variables (red)
 (proximity implies similarity)



Interpreting the variables along the second dimension (F2, second factor) is more challenging. Because negative assessments during review for all five of the 83.7 criteria map together with the outcome (supplementary variable) this factor appears related to a failure to fit the profile of a worthy acknowledgment candidate, in essence a “criteria” factor where those satisfying all the criteria score positive values on the F2 dimension (y-axis). The the temporal variables and theanother petitioner variable also score positively on this dimension pointing in the opposite direction. Most likely, the F2 factor captures importance of temporal relationships because the various levels of petition timing, TA1 timing, and decision timing are the furthest from the centroid or “average” values used to calculate the factor.

My analyses provide empirical support for several factors asserted by other researchers as influential in the FAP. My MCA supports the view that satisfying the acknowledgment criteria most reliant on external perceptions and documentary evidence is of decisive importance in outcomes. My analyses also suggest that geography and timing are important factors influencing outcomes. Finally, while the MCA supports the view that higher rates of mixed African American-American Indian ancestry among petitioners reduces the likelihood of successful outcomes it does not lend support to the view that areas with petitioning groups differ from other parts of the country in the number individuals self-identifying as of White-American Indian ancestry.

Figure 7: Plot of petitioners along MCA Factor 1 and Factor 2

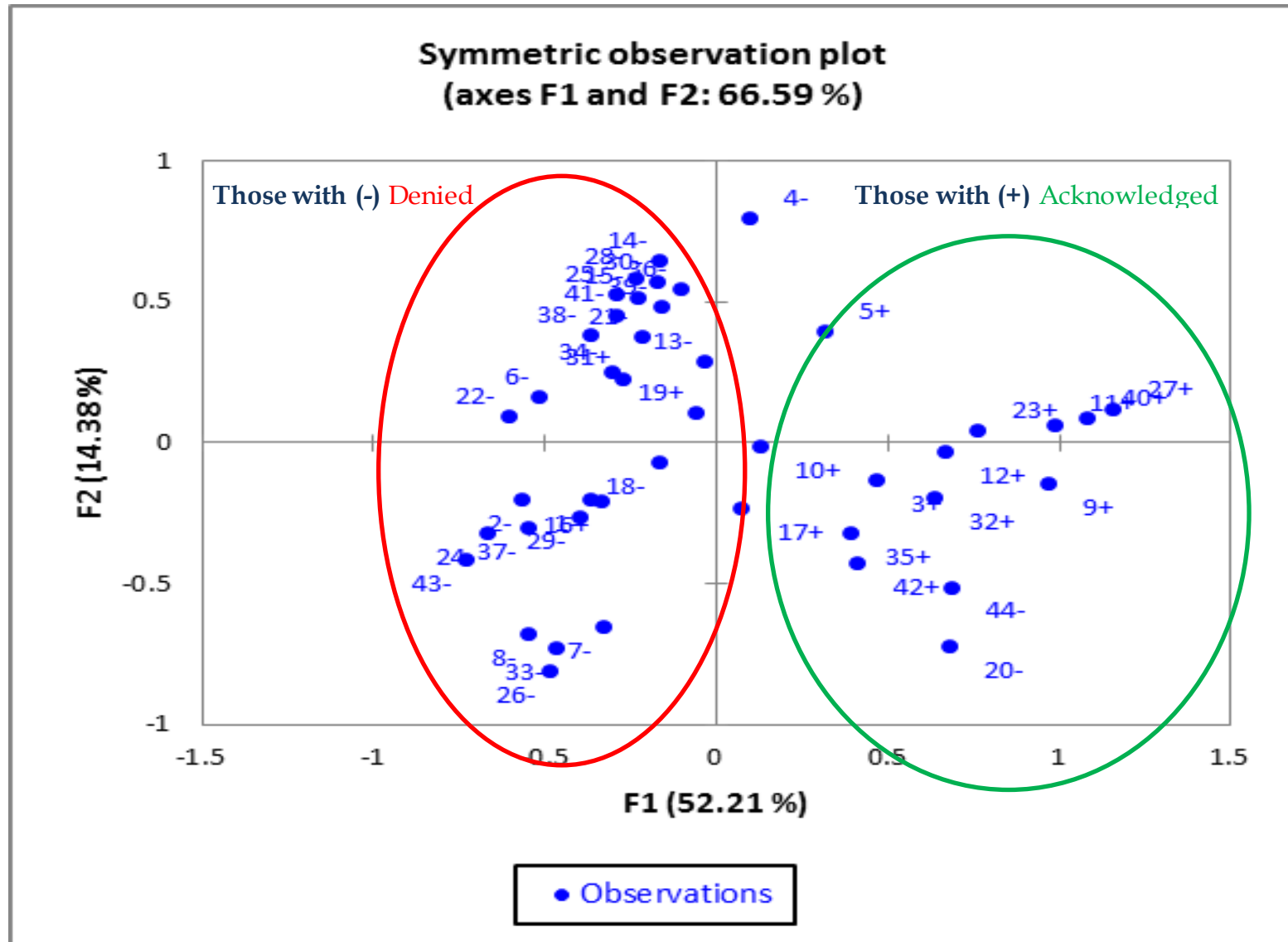
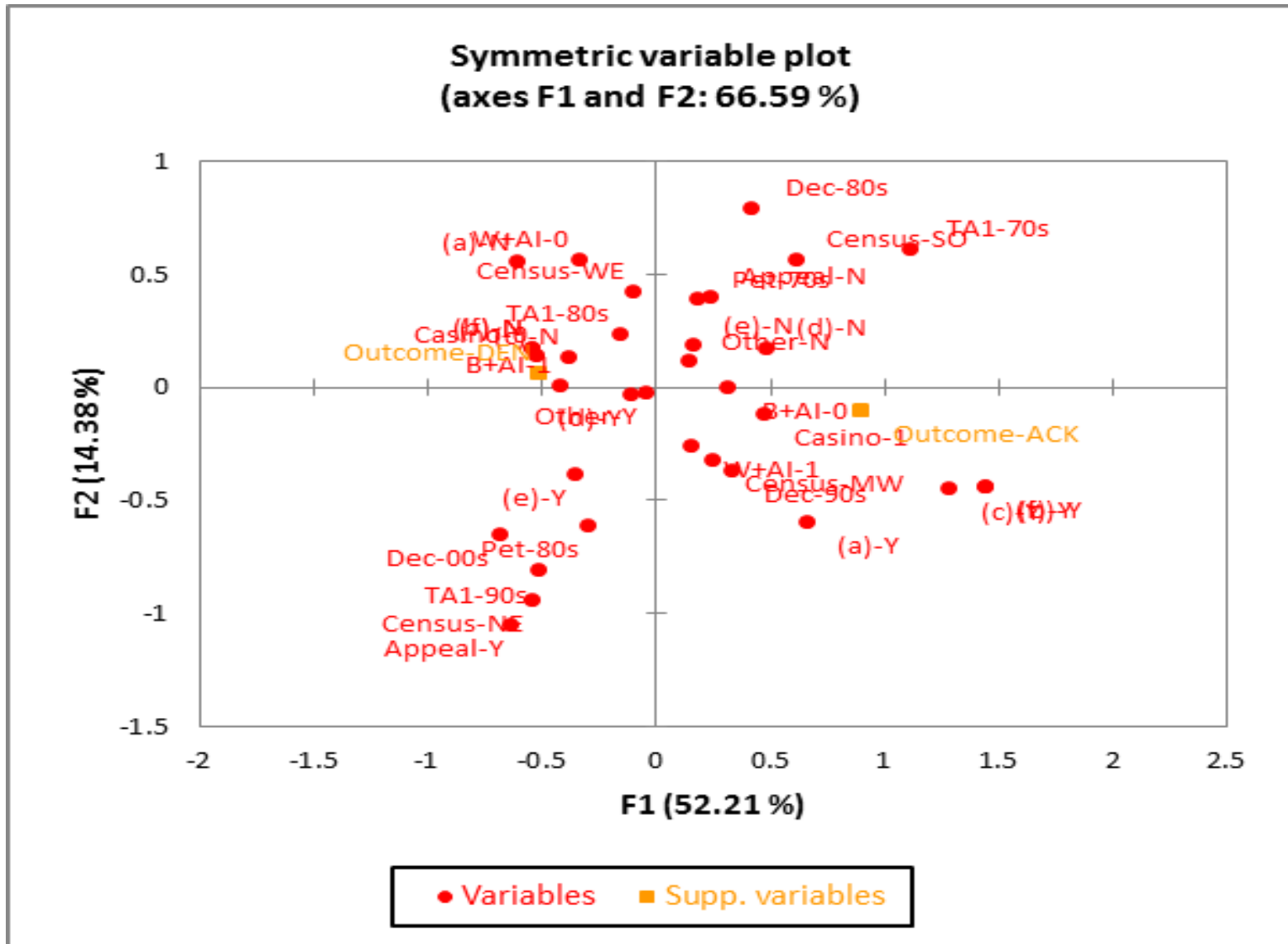


Figure 8: Plot of variable levels (values) along MCA Factor 1 and Factor 2



4.3.12 Interpreting documentary evidence

This research neither supports nor challenges the view widely-held among petitioners and researchers that federal acknowledgment is unfair. I think it shows the process is not arbitrary or inconsistent as some argue. If anything this research shows considerable consistency in the interpretation of the criteria and the evaluation of documentary evidence by OFA staff. What I clearly demonstrate is that some differences in the composition of documentary evidence seem to matter greatly for terms of outcomes.

My analyses of *TA* passages describing weaknesses in documentary evidence indicate that the criteria most reliant on external documentation are stronger predictors of future outcomes than the other criteria. My analysis of *TA* letters shows that if petitioners are deemed during the review phase to have failed to provide sufficient evidence for 83.7 criteria (a), (b), or (c) they are unlikely to correct those deficiencies before a final determination, even with the assistance and advice of OFA staff. This lends further support to the view that the critical obstacles are more likely documentary gaps than resource deficits. My analysis of the *TA* letters in Chapter 4 shows that the perception of weakness documentary evidence for the external identification, community, or political authority criteria during the review phase strongly predicts final determinations issued years later. A negative perception regarding criterion 83.7(a) is all but determinative. These

data show that petitioners deemed by the OFA so suffer weaknesses in the documentary evidence they provide for external identification are highly unlikely to achieve acknowledgment. This conclusion receives further support from a MCA analysis showing an “external identification” dimension driven by evaluations of (a), (b) and (c) as communicated in *TA* letters. My analysis shows that petitioners perceived by OFA as satisfying those three criteria during review are likely to secure acknowledgment whatever their other characteristics or perceived weaknesses. Thus a very important finding of this research using a variety of data sources methods is empirical support for the view of FAP critics that process is determined by non-Indian interpretations of textual documentary evidence created by non-Indians. The MCA lends tentative support for those who believe success is more difficult now than in past years and that success is influenced by geography.

When OFA requests additional evidence or suggests specific evidence that petitioners should locate the staff always suggest textual documentary evidence, usually to documents created and archived by major non-Indian institutions. This empirical finding supports assertions in the literature. OFA staff finds successful and unsuccessful petitioners equally likely to suffer from documentary gaps but unsuccessful petitioners are far more likely suffer the perception of explanatory gaps. Finally, an MCA analysis of the petitioners and several documentary and other factors suggests the FAP criteria most reliant on external perceptions and

documentary evidence determine future outcomes. Knowing how the documentary evidence submitted by petitioners for 83.7(a), (b), and (c) is perceived by OFA staff during the review phase provides a reliable guide to petition outcomes that may occur years in the future.

The various methods I use in this chapter to analyze TA letters provide unprecedented insight into the reasoning of OFA staff about documentary evidence in the FAP. From several directions – correlating passages coded for evidentiary weaknesses with outcomes, mapping the relationships of petitioners and a set of acknowledgment factors, identifying individual terms associated with discussions of weaknesses concentrated in the TA of successful and unsuccessful petitioners, and significant differences in types of perceived evidentiary weaknesses – I have described and analyzed the most important factors associated with petition success.

CHAPTER 5: The identity of evidence in the FAP

The Federal Acknowledgment Process pivots on the creation and circulation of representations of legal knowledge about petitioners. These representations rest on the presentation and interpretation of astonishing volume of documentary evidence. This study offers researchers, petitioners, and OFA staff the first systematic analyses of the character and interpretation of documentary evidence in federal acknowledgment. My analyses in Chapter 3 demonstrate that unsuccessful petitioners are able to access and submit a larger amount of documentary evidence per member than successful petitioners and they are comparatively more reliant on federal documentary evidence. Though they submit fewer letters overall successful petitioners have more letters from national Indian law organizations and members of congress. Collectively, my analyses lend weight to an explanation of petition failure anchored in the unavailability of documents rather than resource deficits. My analyses of *TA* letters in Chapter 4

lend further support for this interpretation because they indicate that despite persistence and the ability to organize and fund a petition effort for years after receiving *TA* letters, perceived weaknesses regarding 83.7 criteria (a), (b), and (c) during review are rarely correctable. Perceived weaknesses in the documentary evidence for the external identification, social cohesion, and political authority criteria better predict future failure than the other mandatory criteria. I also show that perceived weaknesses in the documentary evidence of successful petitioners differs from the weaknesses OFA perceives in the documentary evidence from unsuccessful petitioners.

In this concluding chapter I synthesize the most important insights arising from my analyses and identify several research communities that will find them interesting. I also describe several limitations in the research given the nature of the data available and the methods I use. I conclude with a brief discussion of future research trajectories invited by my analyses.

5.1 RQ1: Is the documentary evidence of successful petitioners different from that of unsuccessful petitioners?

The first research question animating this exploratory study asks whether the documentary evidence submitted by successful petitioners differs from that submitted by unsuccessful petitioners. My analyses of metadata from the FAIR

database for more than 126,000 documents submitted by 11 of the 44 petitioners reveals several intriguing differences.

By classifying OFA-assigned document types into categories reflecting their documentary origins, I identified significant differences between successful and unsuccessful petitioners. Unsuccessful petitioners submit far more documents per member, an average of 2.5 times as many documents per member as successful petitioners (15.7 as compared to 6.2), $t(9) = 1.869, p < .05$. Unsuccessful petitioners are also more reliant on documentary evidence originating with the federal government (744.1 vs. 107.0, $t(8) = -3.67, p < .01$). In short, unsuccessful petitioners submit more documents per member and more federal documents than successful petitioners.

Letters from supporters and opponents represent an important and easily measured form of overt influence. In the context of the FAP, the inclusion of a letter is an important formal contribution and a sign of political influence because individuals hoping to influence outcomes have a strong incentive to submit letters. Because access to letters is effectively impossible no analyses of their content can be performed. Even so, my analyses of the metadata for thousands of letters in the 11 FAIR databases reveals several intriguing differences between the two types of petitioners.

Petitioners denied acknowledgment submit almost 2000 more letters or about six times as many letters on average (2346.6 vs. 385.0), $t(6) = 1.961, p < .05$.

This group is more reliant on letters from individuals in the federal government, with an average share of letters from federal authors (32.1%) more than twice the average share for the three successful petitioners (14.1%), $t(9) = 1.575$, $p = .07$. Those denied acknowledgment have more federal letters overall and this difference appears concentrated in letters from the regional offices of the BIA and DOI. The only types of federal letter where successful petitioners have a larger share are those from members of congress and national federal Indian agencies such as the BIA, the DOI, and their predecessors. Unsuccessful petitioners are able to secure letters from persons in the federal government in larger volumes but these letters are disproportionately from regional as opposed to national federal offices. A plausible explanation for this finding is that unsuccessful petitioners rely on many letters from local federal agents as part of their effort to establish the Indian ancestry of the members, the kind of thing that letters from local agents naming ancestors could establish. A recurring weakness regarding external identification discussed in *TA* letters is documentary evidence that only establishes the American Indian identity of members' ancestors as individuals but not of the tribe as a distinct group. A great deal of additional research is needed, but one explanation is that successful petitioners produce letters from national federal entities and offices because they were once recognized at a national level as a distinct tribe. The universe of individuals able to secure letters originating from local and regional offices is far larger than the universe of distinct American

Indian nations able to secure letters from federal entities based in the nation's capital. On this reasoning, petitioning groups unable to secure such letters may tend to rely more on regional sources they can locate or because they invest more effort proving their members descend from Indian ancestors. This informed speculation is plausible but not proven by these analyses and further research is needed in this area.

My analysis of the nature of letters from tribal sources shows they are far more likely to originate with the unsuccessful petitioner than is true of the tribal letters of successful petitioners. Unsuccessful petitioners tend to submit many more letters from tribal sources and these are disproportionately from members of the petitioning group. In contrast, I show that letters of support from pan-Indian legal advocacy organizations like the Native American Rights Fund are concentrated among successful petitioners, confirming a conclusion reached by Cramer (2001). A larger share of letters of tribal origins submitted by successful petitioners (20.9%) came from pan-Indian legal advocacy organizations than is true for unsuccessful petitioners with only 2.0% of their tribal letters from such organizations, $t(2)=-5.221$, $p < .05$.

Several interesting if tentative conclusions emerge from this unique analysis of a large volume of documentary evidence submitted by a quarter of petitioners receiving a final determination. The challenge confronting petitioners is less the inability to locate and identify documentary evidence – a resource

deficit explanation, though the possibility cannot be dismissed entirely - than it is the absence of such evidence regardless of resources. Support for this important conclusion is found in the fact that unsuccessful petitioners in these data possess the resources to secure enormous volumes of documentary evidence and sufficient resources to see the lengthy and expensive petition process through to its conclusion. This suggests some petitioners may fail to achieve acknowledgment not because they lack resources or the capacity to assemble and organize documentary evidence but because they cannot close gaps in the available documentary evidence. Gaps in the scope or content of documentary evidence produced in the past seem more important than present day resource deficits as explanations for petitioner failure. Further research is warranted because my analysis cannot determine whether such gaps arise because ancestral groups rendered themselves less visible as documentary traces, were "misrecorded", or because they never were a distinct American Indian community.

In summary, unsuccessful petitioners are able to locate, organize, and submit a very large volume of documentary evidence, on average far more per member than unsuccessful tribes. They also rely more heavily than successful tribes on documentary evidence of federal origins. They also submit more letters from tribal sources and this difference is concentrated in letters from members of the petitioning tribe. Successful tribes have a disproportionate share of letters from congress persons and legal advocacy organizations. The central insight to emerge

from these analyses, as I have argued, is that documentary gaps or external perceptions better account or failure than resource deficits, though all three undoubtedly play roles. Confirming earlier findings by Cramer (2001) and McCullough and Wilkins (1995), I find that successful tribes have more letters from influential political leaders and Indian organizations suggesting the potential importance of political capital.

5.3 RQ2: Do OFA professionals perceive the evidence of successful petitioners differently?

My second research question asks whether the documentary evidence of successful petitioners is perceived differently by the highly-trained OFA professionals. The answer is a resounding yes. My analyses in Chapter 4 show significant differences in how staff communicates their perceptions of the documentary evidence of successful and unsuccessful petitioners. For instance, my analyses broadly support those characterizing the FAP as text-centric and reliant on the perceptions of and documentary evidence produced by non-Indians. This is most true for criterion 83.7(a) external identification where a negative evaluation in *TA* letters is essentially determinative and irrecoverable.

Similarly, a perceived weakness on 83.7(b) or (c) predicts future denial but this is confounded by the fact that petitioners failing (b) and (c) are also likely to have failed (a). By contrast, a negative assessment during the review phase for

83.7(d), (e), and (f) does not predict future failure and appear more easily overcome between review and a final determination. Indeed, tribes acknowledged are just as or more likely than unsuccessful petitioners to suffer perceived weaknesses relative to these criteria during review.

My analyses confirms that certain criteria (a, b, c) proved the most difficult to satisfy during the preparatory or review stage of the FAP and also suggest that not all kinds of evidence deficiencies are equal. Acknowledged petitioners are just as likely as those denied acknowledgment to suffer from perceived documentary gaps. Documentary gaps refer to passages in *TA* letters where the OFA staff describes evidentiary weakness due to the absence of documents, for instance, the failure to include birth certificates for persons named as a member of the group or missing minutes from council meetings. This type of perceived deficiency is twice as prevalent as explanatory gaps overall and present in the TAs of more than 50% petitioners. There is no significant difference between the two outcome groups in terms of the frequency of this perceived deficiency. All petitioners are perceived as routinely suffering from this deficiency. It is a “normal” evidence deficiency as likely as not addressed by the time of a final determination. Those petitioners later denied acknowledgment, however, are far more likely perceived by OFA staff to suffer from explanatory gaps, especially relative to 83.7(a), (b), and (c). Passages revealing perceived explanatory gaps refer to an evaluation by OFA staff that a

criterion is on balance unmet because the submitted documentary evidence does not demonstrate the probable truth of facts in question.

Also suggestive are the linguistic differences I identified to distinguish *TA* letters as a type of organization communication unique to the FAP and the terms distinguishing letters sent to petitioners for both outcomes. I also identified the significant terms associated with both future success and future failure in passages describing particular kinds of evidentiary weaknesses.

Successful petitioners as a rule submit documentary evidence found deemed adequate during review to satisfy 83.7(a), (b) and (c). There is almost no recovery from perceived deficiencies for external identification during the review stage. Petitioners perceived as failing to satisfy either the (b) community or (c) political authority criteria but ultimately successful were more likely to suffer from documentary gaps regarding (b) and (c) than petitioners denied acknowledgment. If a petitioner is perceived during review as failing to meet (b) or (c) or (d) or (e) that is later acknowledged it is likely were perceived as suffering documentary as opposed to explanatory gaps. When tribes denied acknowledgment are perceived as failing (b) or (c) it is more likely for perceived explanatory gaps than for documentary gaps. Petitioners in both outcome groups suffer documentary gaps but petitioners denied acknowledgment also suffer from explanatory gaps, most notably for the community and political authority criteria.

5.4 Limitations

Federal acknowledgment is much more than an administrative proceeding. It is a complex socio-political, cultural, and economic process that over its course enlists the participation of a wide variety of individuals, groups, and institutions. The various interests of these participants only partially overlap and some find themselves in opposition. This complex and dynamic reality inexorably leads to the conclusion that it is impossible to explain such complex phenomena in a single effort with any depth and coherence.

Instead, in this exploratory study I analyze particular aspects of the acknowledgment process, aspects that I plausibly argue are of special interest. My most important contributions provide insight into how documentary evidence is used by petitioners and how it is analyzed by the OFA staff. I necessarily make choices about which factors deserve close analysis and made informed choices about which features of those factors merit scrutiny. As the product of myriad choices, each with tradeoffs, this study is nevertheless a valuable contribution to our collective understanding of the role of documentary evidence in the FAP. The force of my findings is constrained by a number of important limitations.

Methodological limitations point to a need for more research before reaching definitive conclusions. For instance, the documentary evidence examined in Chapter 3 does not come from a random sample of FAP petitioners. The 11

petitioners comprising my sample are potentially different in some important respects. There are, however, no statistically significant differences between my sample and the other 32 petitioners for factors such as size, geography, petition timing, or acknowledgment outcome. The majority of the analyses in Chapter 3 use independent two-sample t-tests and while such tests are extremely robust to the assumption of a normal distribution for the independent variable(s) in both samples, this assumption is not always satisfied for these data (Guiard and Rasch 2005). Because this is an exploratory I study I also reported findings of potential importance even when, in some cases, associated p values are do not meet normal standards of significance.

A far more fundamental limitation in my analyses in Chapter 3 is the absence of information about documents other than the view afforded by metadata. My analyses show, for example, that there is a letter from a named member of congress but whether that letter supports or opposes a petition cannot be known. Analyses of a large volume of documents through the prism of a narrow selection of metadata must be taken for what it is: a limited and frankly thin view of the documents to which they refer. But it is the only view realistically possible and by directing a narrow gaze at a great many documents from a non-trivial number of petitioners a number of new and significant insights emerge.

A different set of limitations apply to my analyses of *TA* letters in Chapter 4. No notable limitations arise from sample selection as nearly every petitioner

received a *TA* letter and every *TA* letter for all cases decided by 2011 are included in my data. My methods analyze every word from all letters in the entire universe of *TA* letters sent to petitioners with decided cases. My selection of *TA* letters is justified by their importance and their structural position in the FAP. But they are not the only potential source of insight and there is really no method with these data to objectively establish either their importance or the quality of insight into staff reasoning they provide. Other documents produced by the OFA are available and open to systematic analysis, including the *Precedent Manual*, the hundreds of *TA* letters for petitions not yet decided, and all the *Proposed Finding* and *Final Determination* documents. The kind of analysis I apply to *TA* letters in could be extended to other classes of documents produced by OFA to reveal how they interpret documentary evidence. What is unique about *TA* letters is that they are provided before a final decision and communicate perceived weaknesses that are in principle correctable. Analyses of evidence reasoning that may predict future outcomes is more valuable than analyses of documents produced to justify a decision after it is made.

Adding new classes of documents, however helpful, would not transcend inherent limits in the capacity of documents to reveal the thinking of their creators. A richer appreciation of evidence reasoning is possible using ethnographic methods to study OFA staff persons processing petitions and actively evaluating documentary evidence. Such a contribution is undoubtedly

worthwhile but impractical because Director Fleming indicates the OFA staff is directed to decline interviews under nearly all circumstances, including for academic research (Fleming, personal communication, 2 July, 2013). However unlikely, gaining direct access to OFA “informants” is important and drawing conclusions about human reasoning merely on the strength of an analysis of documents they produce is limited.

These various limitations do not appreciably attenuate my contributions. The purposes of this exploratory study described in Chapter 1 are fully realized and my contributions increase enormously what is publicly-known about documentary evidence in the FAP. My deliberative exploration identifies a number of important areas ripe for further research.

5.5 Scholarly contributions

This research makes important contributions to several academic communities, including archival studies.

For the archival community, this study engages a *national context* that has been relatively neglected in the study of ‘indigenous archives’ and one that is unique among Anglo-settler states. Achieving independence earlier than the other such states and by way of armed revolution there is a unique texture to the history of American interactions with native peoples that is stamped on records about we

created about them. To survive the young republic accommodated powerful indigenous nations because establishing the “legitimacy of treaties and therefore the legitimacy of Euro-American control of land” required at least the appearance of consent by nations viewed as sovereign by other powers (Konkle 2004:3).

Nearly four hundred treaties remain in force, a pattern without parallel in European colonial history (Hoxie 2001). A complex legacy of interlocking legal opinions, precedents, and policies for Indian Country are deeply woven into the unique fabric of American national identity, culture, history, and legal discourse (Williams 1990). Despite this intriguing history, Australian and Canadian archivists engage in indigenous archives research more than their American counterparts. This study takes a modest step to address that imbalance.

I also examine a *context of interaction* between indigenous peoples and documentary evidence not yet studied by archivists or others. No archivist previously examined the FAP and not one of the many scholars from other disciplines to examine it make documentary evidence an important dimension of their analysis even as they tend to acknowledge its centrality. I use the FAP to examine in detail in a particular case where *documentary records are used as evidence*, an area of substantial and sustained research interest in archival science. I complement the relatively few critical investigations of the document-evidence relationship by archivists by adding a systematic and empirical view of that relationship in a specific case.

Particularly salient for archivists, this work provides additional support for archival critics of our traditional conceptions of evidence. For the English-speaking world, the laws of evidence arose during the same period as the foundations of archival theory and the experimental science laid over the last decades of the 17th century. Those origins are not and have never been universal. From these origins, legal conceptions of evidence have continued to powerfully influence archival thinking about documents and evidence and underpins recent initiatives attempting to ensure the evidential qualities of digital records are preserved (MacNeil 2007). While methodologically unusual for archival studies, this research, this research lends powerful empirical support for those who believe archivists should enlarge their vision when thinking about evidence, particularly in the context of documentary evidence and indigenous communities.

Two other scholarly communities that will find this exploratory study valuable are researchers interested in federal acknowledgment and legal scholars interested in evidence. To the body of research about federal acknowledgment reviewed in Chapter 2, I add documentary evidence as a *new factor influencing acknowledgment outcomes*. This exploration identifies several interesting differences in the documentary evidence of successful and unsuccessful petitioners and reveals some of the evidence reasoning of OFA staff for a large number of petitions with known outcomes. Even modest contributions are valuable because the “reasons behind decisions” made by OFA staff and “the means by which they

are reached are, for the most part, unknown” (Starna 1992:134). Without claiming to fully explain OFA decision-making this research for the first time make documentary evidence the object of systematic investigation and finds differences in interpretation and in the communication of those interpretations in *TA* letters.

5.6 Future research

The syncretic approach in this exploratory study should be extended to include additional classes of FAP documents. *TA* letters for the several hundred petitions not yet decided provide additional material to enlarge the size of the linguistic corpus. Using the profiles of pending cases I could project future outcomes and iteratively refine profiles and predictive models with new data as cases are decided. These hundreds of *TAs* are not included in this study because they are not decided and petitioners may receive additional *TA* letters. Many pending petitions may never enter active consideration.

Proposed Finding and *Final Determination* documents are open to coding and linguistic analyses. For this research I chose to analyze *TA* letters because they are focused more narrowly on documentary evidence and easier to process. During this research I lacked the technical resources and acumen to process and analyze documents of great length but with better platforms, more computing power, and

greater research experience this larger number of much longer documents could be analyzed.

By using the codes and applied and the terms in the passages receiving those codes future research code semi-automate the coding of the 100s of thousands of pages in *Proposed Findings* and *Final Determinations*. Passages of defined length (paragraphs, sentences) could be identified and ranked based on their similarity to coded passages in the *TA* letters. Passages above some similarity threshold or containing certain critical terms could be automatically coded using a codebook and adaptive dictionary adapted from this study. Helpfully, *Proposed Findings* and *Final Determinations* exist as high-quality digital documents unlike most *TA* letters. Creating a much larger corpus of terms (words) across a larger number of document of different types would permit meaningful topic modelling (cf. Blei 2013), a richer method of analyzing a large collection of documents. This study is only the first step in analyzing documentary evidence in the FAP. New data sources should be explored and new analytical methods applied.

More fundamentally, there is much more to learn about how human beings mobilize and interpret documentary evidence, considerations not engaged in this research. I set aside such interests out of practical necessity but I appreciate that it is possible to fully understand federal acknowledgment without such research. In *Reading Beyond Words: Contexts for Native History*, historians Jennifer Brown and Elizabeth Vibert urge researchers to excavate how meaning is made from texts:

...texts are not transparent. Nor do they simply offer some pre-existent body of 'raw facts'. The 'facts' are socially-constructed, moulded by the social and cultural forces in place when the texts were created, and by the later contexts in which they have been reread and reinterpreted... Our sources, the texts we study, present us with complex subjectivities, multiple ways of knowing the world. This is part of their fascination. The voices of our documentary texts can be listened for, articulated, balanced, with one another; but only through silencing or suppression can they be melded into a single voice or unquestioned truth (Brown and Vibert 1996:x-xi).

Their cautionary note seems particularly apt in case of the FAP where historical 'facts' are at issue, where their status as facts is anchored in particular readings of evidence from texts that are open to multiple interpretations.

A goal motivating this research, unrealized in this exploratory study, was to better understand how FAP participants mobilize documentary evidence. How do petitioners experience the complex challenges of creating a petition and gathering and organizing and utilizing documentary evidence? How do they evaluate the evidential value of documents? What are the origins of their evaluative methods? In short, how do the petitioners represent documentary evidence as proof they meet the FAP criteria? Do their interpretations differ from the OFA staff? Answering such questions requires much additional research, including work with petitioners to learn how they conceptualize and complete this complex set of tasks. This study provides some insights into how the OFA staff addresses the complex intellectual challenge of interpreting the documentary evidence petitioners submit. Ethnographic research is necessary to achieve a deeper understanding why they interpret documentary evidence as they do.

I provide no insight into the decision-making of petitioners and relatively little for the OFA staff. This is not the same thing as claiming those experiences are unworthy of focused research. Future studies might follow the ethnographic methods characteristic of prior research but apply them to analyze the use and interpretation of documentary evidence in the FAP. The dissertation research reviewed in Chapter 2 examines tensions over identity and representations of identity within petitioning groups and between petitioners and others. The rich ethnographic methods they use to understand identity formation and negotiation in the FAP should be directed at an analysis of the specific challenges of mobilizing and interpreting documentary evidence.

5.7 Toward a richer conception of evidence

It is tempting to read acknowledgment as a straightforward story of colonialism, or perhaps neo-colonialism, as some read the “Indian New Deal” of the 1930s or the major Indian policy reforms of the 1960s and 1970s (Churchill 1993). It is during that the 1930s that many of the notions of indigenous identity that continue to animate federal policy were most clearly articulated and when the modern structures of governance in Indian Country were created through the Indian Reorganization Act (1934). Notions of tribal identity codified in this policy

architecture reverberated over the decades, especially in the FAP and remain influential today.

Undoubtedly it is part of the story but I do not read the FAP as merely a neo-colonial exercise. The individuals involved are not impelled toward pre-determined interpretations of evidence, at least not as imagined by those who reduce the FAP to an instrument of neo-colonialism (Cramer 2001, Miller 2003) . The interplay of agency and structure and the dynamics of resistance, accommodation, and negotiation of identity that captures the interest of so many acknowledgment researchers should prove valuable for analyzing the use and interpretation of documentary evidence. Interesting and important questions about what precisely constitutes documentary evidence and how it is identified, created, or interpreted are sadly unanswered in this study and should invite attention of future researchers.

Anthropologist Bruce Granville Miller (2003) argues that modern states, including the United States and his native Canada, “manage” many indigenous populations by attempting to render them invisible. Miller was a consultant to the Snohomish (denied in 2004) and the Samish (acknowledged in 1996). Both descend from historical tribes and are closely linked to other federally-recognized Samish-speaking tribes in Washington. Both pursued federal acknowledgment despite substantial costs while foregoing material benefits immediately available by identifying with other nearby federally-recognized tribes. To pursue

acknowledgment given these considerable sacrifices demonstrates, Miller argues, a powerful urge for personal and collective 'counter-narratives' that challenge state efforts to render them invisible (Miller 2003).

On May 22, 2014 the OFA published a new Proposed Rule for the FAP and invited public comment through the end of the September of 2014. A summary in the Federal Register describes the purpose of the proposed rules is to "make the process and criteria more transparent, promote consistent implementation, and increase timeliness and efficiency, while maintaining the integrity of the process" observing that,

The current process has been criticized as 'broken' or in need of reform. Specifically, the process has been criticized as too slow (a petition can take decades to be decided), expensive, burdensome, inefficient, intrusive, less than transparent and unpredictable" (OFA 2014).

The proposed changes would accelerate final decisions and reduce the "documentary burden" of the FAP (OFA 2014). The most far-reaching changes affect the three criteria found in this research to raise the greatest obstacles for petitioners: 83.7(a) external identification, 83.7(b) social cohesion, and 83.7(c) political authority. If adopted the new rule would eliminate the external identification requirement, the most challenging on my analysis. It is also the criteria most likely to prove insurmountable for those petitioners with significant histories of dislocation, forced underground survival strategies, and misidentification in records created by non-Indians. The proposed changes require

that petitioners demonstrate social cohesion and political authority only since 1934, not coincidentally the year the IRA became law.

Many indigenous peoples and some archivists have long recognized the inherently limited window on indigenous histories afforded by archival records and textual documents created by non-Indians (Harris 1999, Millar 2006). Many others have described the ways the encounters with archival materials can prove traumatic because of painful omissions or hurtful representations (Ross, McKemmish and Faulkhead 2006, Stampe 2007, Thorpe 2001). At a minimum OFA staff should be more cognizant of these perceptions.

One way the OFA might lessen the documentary burden while maintaining “the rigorous integrity needed” (Office of the Assistant Secretary-Indian Affairs 2014) is to afford indigenous communities, including petitioners, some “interpretive equity” in the analysis of documentary evidence, at least for those records created by federal authorities during early periods of interaction. Archivists working with indigenous communities and indigenous records confirm that many archival records were created with input from the ancestors of indigenous peoples and communities alive today, sometimes crucially important contributions. Outside the scope of archival theories of provenance and record creation, such contributions are overlooked under normal circumstances. “If we follow the familiar formal view of archival theory”, writes Nesmith, the foundational concept of provenance refers,

mainly the actual inscriber—the literal writer-maker—of records, whether an individual or institution. When viewed this way, Aboriginal people have no real role in the provenance of many government, church or business records because they were not their literal inscribers. A great deal of information in such records, however, was obtained from Aboriginal people (Nesmith 2006:353).

No one knows how often or for which indigenous records the phenomenon

Nesmith describes applies to acknowledgment. The OFA should engage archivists to assist in the collaborative interpretation of documentary evidence and to direct work with petitioners and others aiming to excavate latent meanings and integrate diverse interpretations (Nesmith 2006).

Nesmith calls this approach ‘societal provenance’ (Nesmith 2005, Nesmith 2006) and under the rubric of ‘secondary provenance’ his Canadian colleague Lori Podolsky-Nordland (re)interprets the Ac kin ok ki’s map to uncover the “additional meanings and layers”, including meanings accumulated after “crossing the archival threshold” (Podolosky-Nordland 2004:147). Nesmith and Podolosky-Nordland are proposing that the traditional archival conception of provenance tied to a single, unitary creator and “expressed largely in the central act of literally inscribing records” fails to capture the myriad ways indigenous knowledge informed their creation (Nesmith 2006:352-353). Excavating their obscured contributions can inform the interpretation of documentary evidence today.

Taken to its logical end Nesmith and Podolosky-Nordland are proposing a seismic shift in archival thinking about provenance in the context of indigenous records. Petitioners might provide useful interpretations of records used as documentary evidence in the FAP for the reasons explored envisioned by Nesmith and Podolosky-Nordland. They may also be able to help explain documentary gaps or limitations in understanding that arises from such gaps. It behooves the OFA to consider the contexts of record creation and destruction that in some cases might account for the failure of otherwise deserving petitioners. An archivist engaged in research on indigenous archives could help OFA staff excavate the history of the particular documents.

OFA staff members are highly-trained professionals and my interactions suggest they are conscientious and appreciate the importance of their work. They are not trained, however, to apprehend the social and organizational processes of record creation, keeping, and archiving. Given the central role of documentary evidence and archival records in the FAP it is inarguable that OFA staff could benefit from the input of archivists. My findings if anything lend substantial evidence to support that self-evident conclusion. OFA should enlarge its pool of professional expertise to include several archivists trained to discover and interpret the context of document creation, especially for indigenous archives, and able to reconstruct partial histories and aid petitioners in appropriately enriching the interpretation of documents and gaps through the lens of 'societal

provenance'. Deeper sensitivities among OFA staff could have far-reaching consequences because they are viewed within the Indian policy context as "one of the [BIA's] most professional and elite wings" (Miller 2004:51). Leaders on Indian policy view OFA staff members as an "academic elite" able to bring "scientific rigor to government policy that was once arbitrary and political" (Beinart 1999:np). In May of 2014 the OFA initiated the process of revising its acknowledgment regulations, a process which holds the promise of the first substantive revisions of the FAP in two decades.

The analyses, methods, and data developed and presented here offer future researchers a solid foundation for investigating the role of documentary evidence in the FAP, something never before studied despite widespread belief that role is likely important. My analyses overall suggest that explanations for differences in outcome pointing to resource deficits or petitioner incompetence are less plausible than explanations that point toward documentary omissions, that is, to documentary evidence never created or practically unrecoverable.

Appendices

Appendix A: Federal Acknowledgment Information Resource
FAIR Database: Main Screen



FAIR: Record navigation dialogue window



FAIR Database: Generate report screen



FAIR Database: System Utilities

The screenshot displays the FAIR (Federal Acknowledgment Information Resource) software interface. The main window is titled "FAIR MAIN SCREEN" and features a navigation menu on the left with options like "Change Petition", "Intermediate Data Tables", "Utilities", "Reports", "Help", and "Exit". The central area shows the "Brothertown" data set, including "Descriptive Data", "Persons", and "Documents" sections. A "System Settings" dialog box is open in the foreground, showing fields for "Petition Title", "Petition Notes", "Petition Path", and "Petition #". The dialog also includes checkboxes for "Image Display Parameters" and "Image Printing Parameters".

FAIR MAIN SCREEN

FAIR
Version 2.1 B
Federal Acknowledgment Information Resource

Brothertown
Brothertown Indian Nation
P:\Brothertown\Brothertown\PET_067-2.1.accdb

Utilities

- Change Petition
- Intermediate Data Tables
- Utilities
- Reports
- Help
- Exit

Descriptive Data

- Data Full Height
- Data Half Height

Persons

- Individuals
- Families

Documents

- Documents
- Citations
- Document Images
- Document Inventory

System Settings

Petition Title: Brothertown
 Petition Notes: Brothertown Indian Nation
 Petition Path: P:\Brothertown\Brothertown\PET_067-2.1.accdb
 Petition #: 067
 Select Image Path: C:\FAIR\Brothertown\067_Doc_Images\ [Update Path] [Petition Path]

Image Display Parameters:

- Automatically Display PDF Files
- Use High Res Side by Side Document Display (1200x1024)
- Use Medium Res Over and Under Document Display

Image Printing Parameters:

- Width in Inches: 8
- Height in Inches: 10.5
- Printer DPI: 600

Display Sizing Button on Full Screen Image Display
 Image Display Height Increase in Twips: 4000
 Image Display Width Increase in Twips: 5000

Exit

Appendix B: OFA-document types and document origins

OFA-assigned document type	Origin	Count
Acknowledgment	OFA	283
OFA	OFA	133
OFA Admin Correspondence	OFA	3459
OFA Anthropologist	OFA	1896
OFA Genealogist	OFA	2648
OFA Historian	OFA	604
OFA Sociologist	OFA	3
BIA per capita Payment Form	FEDERAL	29
Census	FEDERAL	5
Census History	FEDERAL	9
Census-Other	FEDERAL	129
Certification NA Status	FEDERAL	4
Federal Census	FEDERAL	3132
Federal Register Notice	FEDERAL	3
Federal Treaty	FEDERAL	33
Indian Homestead Application	FEDERAL	45
Military Record	FEDERAL	17
Official Federal	FEDERAL	2553
Social Security Card	FEDERAL	185
United States Military	FEDERAL	130
Agenda	TRIBAL	358
Allotment Application	TRIBAL	1
Ancestry Chart	TRIBAL	11432
Ancestry File	TRIBAL	525
Ancestry Report	TRIBAL	109
Ancestry Table	TRIBAL	17
Ancestry Tree	TRIBAL	222
Attendance List	TRIBAL	587
Audit Form (membership)	TRIBAL	145
Ballot	TRIBAL	42

Brochure/Program	TRIBAL	352
CA Roll Update Form	TRIBAL	17
Descendancy Chart	TRIBAL	1006
Enrollment Affidavit	TRIBAL	203
Enrollment Application	TRIBAL	2022
Evidence Table	TRIBAL	58
Family Group Record	TRIBAL	2415
Genealogical File	TRIBAL	2248
Genealogy Report	TRIBAL	26
Governing Document	TRIBAL	283
Hourglass Tree	TRIBAL	1087
Kinship Chart	TRIBAL	19
Kinship List	TRIBAL	429
Meeting Agenda	TRIBAL	408
Meeting Notice	TRIBAL	13
Member Application	TRIBAL	24
Member File	TRIBAL	3002
Member Renunciation	TRIBAL	242
Member Affirmation	TRIBAL	374
Minutes	TRIBAL	4206
Official Tribal	TRIBAL	320
Outline Descendent Chart	TRIBAL	47
Petition	TRIBAL	2
Petition Exhibit	TRIBAL	3772
Petition Narrative	TRIBAL	511
Resolution	TRIBAL	378
Signed Petition	TRIBAL	3
Tribal Census	TRIBAL	388
Tribal Enroll Activity Sheet	TRIBAL	874
Tribal Newsletter	TRIBAL	265
Land Patent	STATE/LOCAL	79
Land Record	STATE/LOCAL	58
Local History	STATE/LOCAL	639

Official Colonial	STATE/LOCAL	180
Official County	STATE/LOCAL	15
Official State	STATE/LOCAL	1336
Parish Record	STATE/LOCAL	127
State Census	STATE/LOCAL	26
Town Records	STATE/LOCAL	197
Town Report	STATE/LOCAL	83
Voter Registration Form	STATE/LOCAL	227
Baptismal Record	INDIVIDUAL	429
Bill of Sale	INDIVIDUAL	2
Birth Certificate	INDIVIDUAL	2089
Christmas Card	INDIVIDUAL	43
Church Record	INDIVIDUAL	177
Claim Application	INDIVIDUAL	71
Death Certificate	INDIVIDUAL	889
Divorce Decree	INDIVIDUAL	8
Email	INDIVIDUAL	1014
Funeral Card/Register	INDIVIDUAL	95
Guardian Report	INDIVIDUAL	62
Individual Chart	INDIVIDUAL	3091
Interview/Oral History	INDIVIDUAL	465
Marriage Certificate	INDIVIDUAL	810
Marriage Records	INDIVIDUAL	4
Memorial Book	INDIVIDUAL	8
Obituary	INDIVIDUAL	714
Pension Application	INDIVIDUAL	13
Probate Record	INDIVIDUAL	2322
School Record	INDIVIDUAL	67
Will	INDIVIDUAL	16
Letter	LETTER	17649
1928 CA Claim Application	LAW	83
1969 CA Judgment Funds App	LAW	42
Affidavit/Deposition	LAW	2295

Brief or Pleading	LAW	132
Contract	LAW	20
Court of Claims Application	LAW	21
Deed	LAW	210
Judgment Fund Findings	LAW	107
Judicial Decision	LAW	392
Law	LAW	254
Litigation-Brief or Pleading	LAW	529
Power of attorney	LAW	2
Special power of attorney	LAW	2
Testimony	LAW	47
Monograph	ACADEMIC	10
Scholarly Journal Article	ACADEMIC	793
Magazine Article	NEWS	100
Newsletter	NEWS	469
Newspaper Article	NEWS	7125
Abstract	OTHER	3
Announcement	OTHER	70
Calendar List	OTHER	42
Compact Disc	OTHER	12
Cover Page	OTHER	2890
Divider/Tab	OTHER	442
Envelope	OTHER	139
Fax	OTHER	223
File Maintenance Form	OTHER	89
Invoice	OTHER	1
Lesson	OTHER	115
Map	OTHER	595
Media File-CD/DVD/Audio	OTHER	115
Memorandum	OTHER	275
Microfilm	OTHER	6
Notice	OTHER	41
Other	OTHER	4099

Other List	OTHER	1144
Phone call notification	OTHER	20
Photograph	OTHER	503
Proclamation	OTHER	3
Program	OTHER	28
Reference Book	OTHER	59
Research Notes	OTHER	23
Retrieval Request	OTHER	33
Table of Contents	OTHER	30
Video	OTHER	4

Appendix C: Letters by type for FAIR databases

Acknowledged in green, denied in red

	Burt Lake	Duwamish	Golden Hill	MaChis	MOWA	Muwekma	Nipmuc	Snohomish	Gay Head	Mashpee	Poarch
OFA	5.9	0.6	2.2	0.0	17.0	5.2	12.5	2.0	7.0	2.2	0.0
Federal	31.2	57.3	15.4	16.7	20.8	31.8	19.5	64.9	8.0	13.4	20.9
Tribal	34.6	18.5	30.3	50.0	49.9	30.2	26.6	16.5	40.0	39.7	35.2
State/local	10.7	3.8	11.0	21.4	3.1	11.4	17.9	6.2	9.0	19.4	26.4
Law	10.2	10.9	32.2	0.0	5.5	6.5	6.4	7.3	9.0	9.4	3.8
Academic	0.7	4.0	2.5	4.8	1.3	9.8	5.0	0.7	11.0	1.6	10.4
News	0.1	0.0	0.4	0.0	0.6	0.3	2.7	0.1	6.0	0.6	0.0
Religious	1.2	0.5	0.0	0.0	0.6	0.5	1.2	0.1	7.0	4.8	1.6
Civil society	0.4	1.9	4.1	4.8	0.3	2.2	5.5	0.3	0.0	4.8	1.1
Corporation	4.4	1.7	0.6	0.0	0.6	0.9	1.2	0.8	2.0	2.0	0.0
School	0.2	0.4	0.0	2.4	0.1	0.8	0.3	0.1	0.0	0.4	0.0
Other	17.2	44.1	0.0	238.1	14.1	79.1	30.6	11.2	0.0	39.9	0.0

Number of top letter-authors present in petitioner case files

	Burt Lake	Duwamish	Golden Hill	MaChis	MOWA	Muwekma	Nipmuc	Snohomish	Gay Head	Mashpee	Poarch
Top-20	3	4	2	0	2	3	15	0	1	1	0
Top-50	9	10	7	0	4	4	33	11	2	2	1
Top-100	14	20	17	0	9	8	60	24	4	4	1

Appendix D: Codebook

Code	Sub-code	Scope note
Evidence	Authenticity	Document what it purports to be
	Credibility	Source capable of proving claim asserted
	Reliability	Related to document control
	Explanatory	Documentary evidence fails to prove
	Documentary	More documents needed to prove
Documentation	Suggestion	Documentary evidence petitioner should locate
	Evaluation	Statement about weight of documentary evidence
	Request	Request for more information via documentation
	Source	Named source to use as documentary evidence
83.7 Criteria	83.7(a)	Documentary weakness for the criteria
	83.7(b)	
	83.7(c)	
	83.7(d)	
	83.7(e)	
	83.7(f)	
	Prior	Passage discusses prior-recognition
	1994	Passage discusses 1994 FAP changes
Persons	Researcher	Named person not part of tribe
	Team	Tribal member of acknowledgment team
	Tribe	Named tribe, recognized or not
	Staff	Named OFA staff member
	Meeting	Reference to in-person or phone conversations

Appendix E: Code frequencies

Evidence	Count	% Codes	Cases	% Cases	Words	% Words
authenticity	10	0.9%	7	15.9%	1218	1.3%
credibility/authority	30	2.8%	19	43.2%	5305	5.8%
reliable	10	0.9%	7	15.9%	1396	1.5%
explanatory	36	3.3%	19	43.2%	6259	6.9%
documentary	67	6.2%	30	68.2%	7034	7.7%
Documentation						
suggestion	34	3.1%	18	40.9%	4979	5.5%
evaluation	36	3.3%	21	47.7%	7214	7.9%
request	92	8.5%	30	68.2%	13187	14.5%
source	27	2.5%	18	40.9%	4951	5.5%
purpose	31	2.9%	19	43.2%	5258	5.8%
83.7 criteria						
(a) external	32	3.0%	21	47.7%	5207	5.7%
(b) community	69	6.4%	33	75.0%	11338	12.5%
(c) governance	51	4.7%	30	68.2%	11571	12.7%
(b) governing doc	37	3.4%	23	52.3%	5092	5.6%
(e) membership	69	6.4%	36	81.8%	12787	14.1%
(f) no other tribes	15	1.4%	11	25.0%	1250	1.4%
prior-recognition	15	1.4%	6	13.6%	2965	3.3%
Persons						
researcher	15	1.4%	11	25.0%	876	1.0%
Team	6	0.6%	4	9.1%	184	0.2%
Tribe	4	0.4%	4	9.1%	157	0.2%
Staff	13	1.2%	8	18.2%	374	0.4%
meeting	4	0.4%	3	6.8%	452	0.5%
TA Recipient	61	5.6%	41	93.2%	150	0.2%
TA sender	61	5.6%	41	93.2%	191	0.2%

Appendix F: *Technical Assistance* letters

TA#	Petitioner and letter number	Author and recipient
1	Burt Lake Band of Ottawa and Chippewa Indians <i>Technical Assistance</i> letter (#1)	Jo Ann Sebastian to Carl L. Frazier 04/05/1995
2	Chinook Indian Tribe.Chinook Nation <i>Technical Assistance</i> letter (#1)	Kenneth Smith to Donald E. Mechal 03/18/1992
3	Chinook Indian Tribe.Chinook Nation <i>Technical Assistance</i> letter (#2)	Hazel E. Elbert to Donald Mechals 11/1/1988
4	Cowlitz Tribe of Indians <i>Technical Assistance</i> letter (#1)	Hazel E. Elbert to Joseph Cloquet 06/15/1983
5	Cowlitz Tribe of Indians <i>Technical Assistance</i> letter (#2)	Hazel E. Elbert to John Barnett 10/21/1988
6	Creeks East of the Mississippi, FL <i>Technical Assistance</i> letter (#1)	Raymond Butler to Neal McCormick 05/18/1979
7	Death Valley Timbi-Sha Shoshone Band <i>Technical Assistance</i> letter (#1)	Rick Lavis to Pauline Esteves 06/25/1979
8	Duwamish Indian Tribe <i>Technical Assistance</i> letter (#1)	Acting Deputy Ronald [Illegible] to Cecille Maxwell 04/20/1990
9	Eastern Pequot Indians of Connecticut <i>Technical Assistance</i> letter (#1)	Ronald [Illegible] Acting Deputy to Roy Sebastian 03/13/1990
10	Golden Hill Paugussett Tribe <i>Technical Assistance</i> letter (#1)	Carol A. Bacon to Aurelius H. Piper Jr. 08/26/1993
11	Huron Potawatomi Inc. <i>Technical Assistance</i> letter (#1)	Hazel E Elbert to David Mackety 10/01/1987
12	Jamestown Clallam Tribe <i>Technical Assistance</i> letter (#1)	Theodore Krenzks to Ron Allen 06/13/1979
13	Jena Band of Choctaws <i>Technical Assistance</i> letter (#1)	Deputy Assistant Secretary- Indian Affairs (Tribal Services) to Jerry D. Jackson 09/11/1986
14	Jena Band of Choctaws <i>Technical Assistance</i> letter (#2)	Hazel E. Elbert to Jerry D. Jackson 10/01/1987
15	Lower Muskogee Creek Tribe-East of the MS <i>Technical Assistance</i> letter (#1)	Raymond Butler to Neal McCormick 05/18/1979

16	MaChis Lower AL Creek Indian Tribe <i>Technical Assistance</i> letter (#1)	Hazel E. Elbert to Pennie Wright 03/01/1984
17	Mashpee Wampanoag <i>Technical Assistance</i> letter (#1)	Renal Eden to Earl H. Mills Jr. 07/30/1991
18	Mashpee Wampanoag <i>Technical Assistance</i> letter (#2)	Holly Reckord to Richard Dauphinais 03/02/1995
19	Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians <i>Technical Assistance</i> letter (#1)	Jo Ann Sebastian to D.K. Sprague 05/05/1985
20	Miami Nation of Indians of IN Inc. <i>Technical Assistance</i> letter (#1)	Hazel E. Elbert to Lois Hammons 01/30/1985
21	Mohegan Tribe of Indians of the State of Connecticut <i>Technical Assistance</i> letter (#1)	Hazel E. Elbert to Couriland Fowler 06/26/1985
22	MOWA Band of Choctaw <i>Technical Assistance</i> letter (#1)	Hazel E. Eibert to Framon Weaver 02/15/1990
23	Muwekma Ohlone Tribe of San Francisco Bay <i>Technical Assistance</i> letter (#1)	Deborah J. Maddox to Rosemary Cambra 05/24/1996
24	Muwekma Ohlone Tribe of San Francisco Bay <i>Technical Assistance</i> letter (#2)	Deborah J. Maddox to Rosemary Cambra 10/10/1996
25	Muwekma Ohlone Tribe of San Francisco Bay <i>Technical Assistance</i> letter (#3)	Deborah J. Maddox to Rosemary Cambra 03/14/1997
26	Muwekma Ohlone Tribe of San Francisco Bay <i>Technical Assistance</i> letter (#4)	Deborah J. Maddox to Rosemary Cambra 06/30/1997
27	Narragansett Indian Tribe <i>Technical Assistance</i> letter (#1)	Patrick A. Hayes to Eric Thomas 12/26/1979
28	Narragansett Indian Tribe <i>Technical Assistance</i> letter (#2)	Patrick A. Hayes to Eric Thomas 03/16/1981
29	Narragansett Indian Tribe <i>Technical Assistance</i> letter (#3)	Patrick A. Hayes to Eric Thomas 06/23/1980
30	Nipmuc Nation (Hassanamisco Band) <i>Technical Assistance</i> letter (#1)	Hazel E. Elbert to Walter A. Vickers 03/01/1985
31	Nipmuc Nation (Hassanamisco Band) <i>Technical Assistance</i> letter (#2)	Hazel E. Elbert to Walter Vickers 02/05/1988

32	Northwest Cherokee Wolf Band (SECC) <i>Technical Assistance</i> letter (#1)	John W. Fritz to Robert Ponder 05/03/1983
33	Northwest Cherokee Wolf Band (SECC) <i>Technical Assistance</i> letter (#2)	John W. Fritz to Robert Ponder 05/03/1983
34	Paucatuck Eastern Pequot Indians of Connecticut <i>Technical Assistance</i> letter (#1)	Jo Ann Sebastian to Agnes Cunha 09/12/1994
35	Poarch Band of Creeks <i>Technical Assistance</i> letter (#1)	Dennis L. Petersen to Thomas N. Tureen 04/26/1979
36	Poarch Band of Creeks <i>Technical Assistance</i> letter (#2)	Ralph Reeser to Eddie L. Tullis 06/24/1980
37	Poarch Band of Creeks <i>Technical Assistance</i> letter (#3)	Hazel E Albert to Eddie L Tullis 08/03/1983
38	Principal Creek Indian Nation <i>Technical Assistance</i> letter (#1)	Ralph Reeser to Arthur R. Turner 05/16/1980
39	Ramapough Mountain Indians Inc. <i>Technical Assistance</i> letter (#1)	Robert Delaware to Ronald Van Dunk 06/15/1990
40	Ramapough Mountain Indians Inc. <i>Technical Assistance</i> letter (#2)	Holly Reckord to Ronald Van Dunk 08/25/1982
41	Red Clay Inter-tribal Indian Band (SECC) <i>Technical Assistance</i> letter (#1)	John W. Fritz to Robert Ponder 05/03/1983
42	Red Clay Inter-tribal Indian Band (SECC) <i>Technical Assistance</i> letter (#2)	John W. Fritz to William Jackson 05/08/1983
43	Samish Tribe of Indians <i>Technical Assistance</i> letter (#1)	Patrick A Hayes to Kenneth Hansen 01/10/1980
44	San Juan Southern Paiute Tribe <i>Technical Assistance</i> letter (#1)	Hazel E. Elbert to Evelyn James 09/19/1984
45	Schaghticoke Tribal Nation <i>Technical Assistance</i> letter (#1)	Jo Ann Sebastian to Paulette Crone-Morange 06/05/1995
46	Snohomish Tribe of Indians <i>Technical Assistance</i> letter (#1)	Thomas Fredericks to William E. Matheson 08/29/1980
47	Snoqualmie Indian Tribe <i>Technical Assistance</i> letter (#1)	James F. Conan to Robert Comenout 02/19/1981

48	Southeastern Cherokee Confederacy (SECC) <i>Technical Assistance</i> letter (#1)	John W. Fritz to William Jackson 05/03/1983
49	Southeastern Cherokee Confederacy (SECC) <i>Technical Assistance</i> letter (#2)	John W. Fritz to William Jackson 05/08/1983
50	St. Francis.Sokoki Band of Abenakis of Vermont <i>Technical Assistance</i> letter (#1)	Deputy AS-IA (Operations) to L.J. Medo 06/03/1983
51	Steilacoom Tribe <i>Technical Assistance</i> letter (#1)	Hazel E. Elbert to Joan Ortez 11/30/1987
52	Steilacoom Tribe <i>Technical Assistance</i> letter (#2)	Holly Reckard to Joan K. Ortez 08/04/1995
53	Steilacoom Tribe <i>Technical Assistance</i> letter (#3)	Deborah J. Maddox to Joan Ortez 12/15/1996
54	Steilacoom Tribe <i>Technical Assistance</i> letter (#4)	Holly Reckord to Dr. Nile Thompson 12/16/1997
55	Tchinouk Indians <i>Technical Assistance</i> letter (#1)	Evelyn W. Pickett to Karleen Mckenzie 02/22/1982
56	Tunica-Biloxi Indian Tribe <i>Technical Assistance</i> letter (#1)	Raymond Butler to Mr. Earl J. Barbry Sr. 10/18/1979
57	United Lumbee Nation of NC and America <i>Technical Assistance</i> letter (#1)	John A. Shapard to Kenneth R. Maynor 03/29/1984
58	Wampanoag Tribal Council of Gay Head <i>Technical Assistance</i> letter (#1)	Hazel E. Elbert to Gladys A. Widdis 07/28/1983
59	Webster/Dudley Band of Chaubunagungamaug Nipmuck <i>Technical Assistance</i> letter (#1)	Hazel E. Elbert to Walter A. Vickers 03/01/1985
60	Webster/Dudley Band of Chaubunagungamaug Nipmuck <i>Technical Assistance</i> letter (#2)	Hazel E. Elbert to Walter A. Vickers 02/05/1988
61	Webster/Dudley Band of Chaubunagungamaug Nipmuck <i>Technical Assistance</i> letter (#3)	Hazel E. Elbert to Walter A. Vickers 02/05/1996
62	Yuchi Organization <i>Technical Assistance</i> letter (#1)	Carol A. Bacon to Al Rolland 09/14/1992

Appendix G: MCA significant test values (variables)

	F1	F2	F3	F4	F5	F6	F7
(a)-N	-4.130	3.769	-0.135	-0.420	1.506	-0.546	-0.495
(a)-Y	4.130	-3.769	0.135	0.420	-1.506	0.546	0.495
(b)-N	-5.792	1.786	-0.088	0.817	-1.185	0.161	-0.318
(b)-Y	5.792	-1.786	0.088	-0.817	1.185	-0.161	0.318
(c)-N	-4.561	1.594	-3.187	0.896	0.378	0.224	-0.717
(c)-Y	4.561	-1.594	3.187	-0.896	-0.378	-0.224	0.717
(d)-N	1.488	0.519	-2.910	2.624	-0.154	3.803	1.444
(d)-Y	-1.488	-0.519	2.910	-2.624	0.154	-3.803	-1.444
(e)-N	1.571	1.737	-2.148	-1.467	4.136	-0.738	-0.434
(e)-Y	-1.571	-1.737	2.148	1.467	-4.136	0.738	0.434
(f)-N	-5.792	1.786	-0.088	0.817	-1.185	0.161	-0.318
(f)-Y	5.792	-1.786	0.088	-0.817	1.185	-0.161	0.318
Appeal-N	2.535	4.221	-0.097	0.611	-1.845	-1.302	-0.488
Appeal-Y	-2.535	-4.221	0.097	-0.611	1.845	1.302	0.488
Pet-70s	1.541	3.181	-0.159	-0.539	0.327	3.147	-2.277
Pet-80s	-1.541	-3.181	0.159	0.539	-0.327	-3.147	2.277
Dec-00s	-3.387	-3.234	1.155	-1.617	0.049	0.573	-1.430
Dec-80s	2.312	4.293	2.956	-0.516	-0.164	-1.203	0.878
Dec-90s	1.175	-1.324	-4.794	2.461	0.137	0.754	0.611
TA1-70s	3.722	2.021	3.025	-0.145	-1.382	0.859	-0.123
TA1-80s	-1.021	1.526	-4.175	-0.221	0.798	-1.724	2.700
TA1-90s	-2.172	-3.460	1.901	0.371	0.348	1.130	-2.850
Other-N	0.501	0.368	0.619	3.913	3.416	-1.634	-1.251
Other-Y	-0.501	-0.368	-0.619	-3.913	-3.416	1.634	1.251
Census-MW	0.588	-0.766	-1.964	2.299	-4.148	-2.942	-0.765
Census-NE	-2.182	-3.793	1.738	0.919	1.240	1.241	1.611
Census-SO	2.334	2.133	1.358	1.488	1.695	0.140	1.834
Census-WE	-0.469	2.097	-1.536	-3.708	0.063	0.666	-2.638
B+AI-0	2.364	-0.029	0.662	4.054	-0.087	0.316	-3.211
B+AI-1	-2.364	0.029	-0.662	-4.054	0.087	-0.316	3.211
W+AI-0	-1.508	2.514	2.079	1.035	-1.655	1.966	1.609
W+AI-1	1.508	-2.514	-2.079	-1.035	1.655	-1.966	-1.609
Casino-0	-3.256	0.848	3.404	2.479	1.680	-0.484	1.096
Casino-1	3.256	-0.848	-3.404	-2.479	-1.680	0.484	-1.096
Outcome-ACK	4.457	-0.533	-1.942	0.084	-1.282	1.995	0.775
Outcome-DEN	-4.457	0.533	1.942	-0.084	1.282	-1.995	-0.775

Values displayed in bold are significant at the level alpha=0.05

Appendix H: MCA squared cosines (variables)

	F1	F2	F3	F4	F5	F6	F7
(a)-N	0.397	0.330	0.000	0.004	0.053	0.007	0.006
(a)-Y	0.397	0.330	0.000	0.004	0.053	0.007	0.006
(b)-N	0.780	0.074	0.000	0.016	0.033	0.001	0.002
(b)-Y	0.780	0.074	0.000	0.016	0.033	0.001	0.002
(c)-N	0.484	0.059	0.236	0.019	0.003	0.001	0.012
(c)-Y	0.484	0.059	0.236	0.019	0.003	0.001	0.012
(d)-N	0.051	0.006	0.197	0.160	0.001	0.336	0.048
(d)-Y	0.051	0.006	0.197	0.160	0.001	0.336	0.048
(e)-N	0.057	0.070	0.107	0.050	0.398	0.013	0.004
(e)-Y	0.057	0.070	0.107	0.050	0.398	0.013	0.004
(f)-N	0.780	0.074	0.000	0.016	0.033	0.001	0.002
(f)-Y	0.780	0.074	0.000	0.016	0.033	0.001	0.002
Appeal-N	0.149	0.414	0.000	0.009	0.079	0.039	0.006
Appeal-Y	0.149	0.414	0.000	0.009	0.079	0.039	0.006
Pet-70s	0.055	0.235	0.001	0.007	0.002	0.230	0.121
Pet-80s	0.055	0.235	0.001	0.007	0.002	0.230	0.121
Dec-00s	0.267	0.243	0.031	0.061	0.000	0.008	0.048
Dec-80s	0.124	0.429	0.203	0.006	0.001	0.034	0.018
Dec-90s	0.032	0.041	0.534	0.141	0.000	0.013	0.009
TA1-70s	0.322	0.095	0.213	0.000	0.044	0.017	0.000
TA1-80s	0.024	0.054	0.405	0.001	0.015	0.069	0.170
TA1-90s	0.110	0.278	0.084	0.003	0.003	0.030	0.189
Other-N	0.006	0.003	0.009	0.356	0.271	0.062	0.036
Other-Y	0.006	0.003	0.009	0.356	0.271	0.062	0.036
Census-MW	0.008	0.014	0.090	0.123	0.400	0.201	0.014
Census-NE	0.111	0.335	0.070	0.020	0.036	0.036	0.060
Census-SO	0.127	0.106	0.043	0.052	0.067	0.000	0.078
Census-WE	0.005	0.102	0.055	0.320	0.000	0.010	0.162
B+AI-0	0.130	0.000	0.010	0.382	0.000	0.002	0.240
B+AI-1	0.130	0.000	0.010	0.382	0.000	0.002	0.240
W+AI-0	0.053	0.147	0.100	0.025	0.064	0.090	0.060
W+AI-1	0.053	0.147	0.100	0.025	0.064	0.090	0.060
Casino-0	0.247	0.017	0.269	0.143	0.066	0.005	0.028
Casino-1	0.247	0.017	0.269	0.143	0.066	0.005	0.028
Outcome-ACK	0.462	0.007	0.088	0.000	0.038	0.093	0.014
Outcome-DEN	0.462	0.007	0.088	0.000	0.038	0.093	0.014

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