

Membership in the Muscogee Nation of Florida

by

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This report provides a brief historical account of the Muscogee Nation of Florida's (hereafter referred to as the Tribe or Muscogee Nation) evolving membership criteria. The text describes the relationship between Creek Indians who remained within their ancestral tribal estate after the Creek Removals of the 1830s and the current membership of the Tribe. The establishment and history of the Tribe's community at Bruce, Florida is also briefly outlined. Historical demographic patterns of the Bruce population, especially its stability over time, are described as a context for a discussion of changing criteria for the Tribe's membership.

Membership History of the Muscogee Nation of Florida in Relation to Historical Creeks

Four of the most prominent nineteenth century communities were those at Mossy Point or Euchee Valley, later known as Bruce Florida; at Atmore in Escambia County, Alabama, now Poarch Band of Creek Indians; at Wards Basin in Escambia County, Florida; and at Blountstown, Calhoun County, Florida. Two of these communities continued to exist as communities into the twentieth century: the Poarch Creek Community, a federally recognized tribe, and the Bruce Community of Florida, which today constitutes the Muscogee Nation of Florida. The other communities at Wards Basin and Blountstown, although they remained home to a number of

Creek Indian descendents , diminished after the 1930s.

The Bruce Community has been politically organized and unified through several institutions, but most significant is the Bruce Methodist Church, founded in 1912. Because the church rolls were preserved since the founding of the Methodist Church, they were used as a base roll for the membership of the Muscogee Nation of Florida.¹ The Bruce Church has been one of the centers of community activity for most of the century and was designated as a Native American Church by the United Methodist Conference in 1991.² Muscogee Nation Tribal Enrollment Ordinance, *Ordinance #04-01-100*, as amended, limited tribal membership to those who trace lineal descent from founding members of the Bruce Methodist Church between 1912 and 1922. The ordinance was amended to include the roster of the Bruce School, originally known as Pine Level, as an additional document to verify the Creek families that settled in the Bruce Community.³ By adopting the Bruce Methodist Church roll as the primary base document from which they count membership, the Muscogee Nation has ensured that the current membership reflects the longstanding, historic Creek community centered at Bruce, Florida.

Demographics Pertinent to the Consistency of Membership of the Muscogee Nation of Florida

Bruce, Florida, is and has traditionally always been, a town occupied almost exclusively by Creek Indians from its origins in the mid to late nineteenth century to the present. A study of Walton County Creek demographic patterns shows that Creek families who are ancestors of

¹ Church Register of the Bruce Methodist Episcopal Church, South, 1912-1922, Muscogee Nation of Florida-Bruce [Hereafter MNOF-Bruce].

² The Florida Muskogee (Creek) News, October, November, December 1991, MNOF-Bruce, p. 4.

³ Muscogee Nation of Florida, Tribal Enrollment Ordinance, Ordinance #04-01-100 (year-1st ordinance-Section 100), 7 February 2004, MNOF-Bruce.

Muscogee Nation members began to homestead and congregate at Bruce before 1900. The majority of households from which Tribe members descend were established at Bruce; the second largest congregation was at Freeport, some ten miles east of Bruce. By 1910, the number of households centered at Bruce had almost doubled as families drifted westward from Freeport to the Tribe's center. The number of Bruce households remained fairly constant in 1920 and in 1930, the last year that detailed census material is available for analysis. Demographic information on file in the offices of the Muscogee Nation allowed researchers to reconstruct household patterns for the years between 1955 and 1965. While the number of Muscogee Nation households increased in the mid-twentieth century, residency patterns remained the same. The majority of Tribe members lived at Bruce, Florida, with a second, smaller concentration at Freeport.

Until the post-World War II period, most marriages took place among the families in the community or with other Creeks (including those at Poarch).⁴ These people converged into the centralized community at Bruce, and continued to live in close proximity to each other and interact through their church and school. In the post-World War II era, economic conditions caused some dispersal of community members, but most of the original families still remain within fifty miles of the town.

Organizational History Pertinent to Membership of the Muscogee Nation of Florida

Organization in Relation to Indian Claims Commission Dockets

Beginning in the 1940s, Bruce community members began to organize around the issues of Indian politics, participating with other Creeks in claims cases, and forming a tribal council to represent the Bruce community and Creek descendants across West Florida. In the 1940s, the

⁴ Genealogical research results on this question are preliminary.

Creeks of Bruce reemerged from decades of cultural and racial anonymity. Bruce community leader J. J. Ward began the work of compiling evidence for his community's eligibility to participate in the Indian Claims Commission, Docket 21 proceedings. J. J. Ward was one leader among many from the Ward family, which consistently provided leadership for the community throughout the twentieth century, including founding the church and school from whose rolls the membership of the Muscogee Nation is formed. On 25 August 1949, Ward and "A delegation of Creek Indians for this County met informally with the Walton County Commissioners Tuesday morning in an effort to elicit assistance from the Commissioners in uniting the Indians of Walton County into a federally recognized group."⁵ J. J. Ward, his family, and other Bruce residents compiled genealogical charts linking them to the same Creek ancestors as those of the Poarch Creek Community.

Social and political relationships between Creeks and Creek descendants were reestablished through the Indian Claims Commission cases, Docket 21, 272 and 276.⁶ In connection with the renewed ties among the Creeks and Creek descendants across the southeast during the 1950s, 1960s and 1970s, the community at Bruce became entangled in various Creek descendants' recruitment organizations. The Muscogee Nation was included on the membership lists of these organizations, whose primary goal was to swell their numbers. Eventually,

⁵ "Creek Indians Delegation Seek Commissioners Aid," *The Breeze*, 25 August 1949, MNOF-Bruce.

⁶ Docket payment letters are a primary source of Indian ancestry for current MNOF members. It should be noted that while most utilized their lineage to Elizabeth English Ward as proof of their Creek ancestry for Indian Claims Commission purposes, current research is in the process of demonstrating that many MNOF members trace ancestry to several other members of the historical Creek tribe. These same people also trace their ancestry to John Ward, who was himself half Creek. In the 1950s and 1960s, when the claims were filed with the Creek Nation East of the Mississippi, and because members of the Ward family took the lead in seeking justice for the Creek families of Bruce, it was simply expedient to trace the Ward/English ancestry of the community members at that time, particularly since the Ward family had the most organized records.

however, the Tribe provided leadership and order within these organizations and shaped some aspects of these movements. Conflicts arose among these state-wide groups, and within a decade, the members of the Tribe retreated from the descendant organizations, reasserting their unique identity and influence from the stability of their community at Bruce. The materials and documents amassed from this period of open Indian activism during the post-WWII years were collected and centralized at Bruce, which continues to serve as a “headquarters” for the Muscogee Nation. A brief explanation of organizational efforts during this period now follows.

The Northwest Florida Creek Indian Council

During the 1970s, a number of entities formed and disbanded, due, in part, to the Indian identification and revitalization from the Land Claim Settlements of the Treaty of Ft. Jackson. The Florida legislature created the Northwest Florida Creek Indian Council to serve as a political subdivision of the state, charged with working on issues specifically related to Creek Indians.⁷ The group began its service to Creek descendants of Escambia County, but sought legislators’ approval to add Creek Indians of Walton, Holmes, Jackson, Bay, Washington, Calhoun, and Gulf counties to its service area.⁸ Walton County Commissioners unsuccessfully opposed the legislation until they heard from their local Indians, about 100 of whom were known to live in

⁷ Bill Kaczor, “Indian Bill Changed,” *The Pensacola (Fla.) Journal*, 24 May 1975, MNOF-Bruce; Bill Kaczor, “Panel Okays Warrington Referendum,” *The Journal*, 28 May 1975, MNOF-Bruce; Bill Kaczor, “House Passes Indian Council, Homeowner Exemption Bills,” *Gulfcoast*, 30 May 1975, MNOF-Bruce; “An Act relating to Native Americans, creating the Northwest Florida Creek Indian Council,” Chapter 75-370, Florida House Bill No. 2306, ca. 1 July 1975, Private Collection of Ann Tucker; Chapter 75-371, Laws of Florida, 1 July 1975, Private Collection of Ann Tucker.

⁸ Public Notice, 7 March 1978, MNOF-Bruce.

Walton County.⁹ The legislation passed and the Secretary of State appointed two Walton County Representatives to the Northwest Florida Creek Indian Council: Mazie Rossell, daughter of J. J. Ward, and Zera P. Denson, the daughter of Malzie Ward Pate and grand-daughter of J.J. Ward.¹⁰

Florida Tribe of Eastern Creek Indians

In 1978, the Northwest Florida Creek Indian Council formalized and incorporated the Florida Tribe of Eastern Creek Indians as a state-chartered group which could receive donations, grant awards, and state appropriations on behalf of Creek families living throughout Congressional District 1 - whose counties were within the Northwest Florida Creek Indian Council's jurisdiction. Through this non-profit Indian Tribe, the Northwest Florida Creek Indian Council actively recruited as many persons of Creek ancestry as possible in all of the counties within the Florida Council's territorial ranges in order to increase the grant funding available to its members.¹¹

By December 1978, the Florida Tribe of Eastern Creek Indians began pursuing federal acknowledgment for its members.¹² In this process the Muscogee Nation of Oklahoma recognized the Florida Tribe of Eastern Creek Indians and the Poarch Creek Community as two distinct entities.¹³ While the Florida Tribe of Creek Indians was originally created and operated by Creek descendants closely related to the Poarch Creeks who lived in the vicinity of Pensacola,

⁹ "Commissioners Oppose Creek Indian Council," *The Herald*, 23 March 1978, Private Collection of Ann Tucker.

¹⁰ Juanita Steadham Felter to Mazie T. Rossell, 4 May 1978, Private Collection of Ann Tucker.

¹¹ "Creeks Receive \$20,000 For Indian Census Here," clipping from unidentified newspaper, 4 November [1974-1975], MNOF-Bruce; Phylliss Sidebotham, "Funding Hinges On Indian Census," *The Pensacola (Fla.) News*, ca. February 1978, MNOF-Bruce.

¹² John Shaperd to James E. Waite, 5 December 1978, Private Collection of Anne Tucker.

¹³ Robert W. Trepp to Wayne R. Faircloth, 17 August 1978, Private Collection of Ann Tucker.

meetings of the organization were held at Bruce, Florida from its earliest years to the present.¹⁴

Within a short period of time, it was apparent that the incorporated state chartered group did not form a distinct community capable of sustaining the organization. After the Poarch Creek Community obtained federal recognition in 1984, the Bruce community formed the core of Florida Tribe of Eastern Creek Indian polity. Members of the Bruce community provided leadership to the Florida Tribe of Eastern Creek Indians, and the Tribe's headquarters and most of its monthly meetings were held in Bruce. As participation in the Florida Tribe of Eastern Creek Indians by people outside the Bruce community waned, the leaders of the Bruce community continued to reinforced its original historic understandings that the families who referred to their overall identity as the "Choctawhatchee Clan" - and who had lived together as a community in the vicinity of Bruce for generations - were the core of Creek community in Northwest Florida. In 1982, they deliberately refocused their work on the Bruce community, calling a meeting at Bruce where the Tribe's priorities and goals were redefined to focus on local issues, which included the work of seeking federal acknowledgment. In 1995, the Tribe submitted their petition for federal acknowledgment, and in 1996 passed a resolution certifying the membership list submitted with the petition text.¹⁵ Also in 1996, the Tribe received, from the Bureau of Indian Affairs Branch of Acknowledgment and Research (BAR; now the Office of Federal Acknowledgment [OFA]), a technical assistance review of their petition, to which the Tribe responded in 2002. By this time, the members of the Bruce Community had struggled for almost 20 years with the membership

¹⁴ TV Facts Advance, "Smoke Signals by the Northwest Florida Creek Indian Council," 1978, Private Collection of Ann Tucker; [Tribal Council] to Fellow Creeks, March 1978, Private Collection of Ann Tucker.

¹⁵ Certification of Tribal Roll: Resolution #92-2, 26 January 1996, Private Collection of Ann Tucker.

effects of the State of Florida's created Council and with a forced accountability for Indian descendants who were members of other communities but formalized into one large tri-community group as the Florida Tribe of Eastern Creek Indians.

The Muscogee Nation of Florida

In 2001, the Tribe changed its name to the Muscogee Nation of Florida. A constitution, drafted in 2001, recognizes the Muscogee Nation of Florida as the successor to the Florida Tribe of Eastern Creek Indians and specifically states that “[n]othing in this name change shall be construed as to deprive us or deny us the right of retaining the name, Florida Tribe of Eastern Creek Indians, official copyright, rights, and properties owned by said tribe.”¹⁶ At the time of its initial submission to the OFA, the Muscogee Nation was a single governmental structure that represented three historically distinct but related communities centered in Escambia, Walton, and Calhoun counties. Only one of these communities, located at Bruce in Walton County, Florida, has organized and led the acknowledgment efforts for three decades. The Muscogee Nation adjusted its membership lists to accommodate persons who had left their organization. They submitted a completed membership roll of 945 persons to the BAR on 8 April 2001, accompanied by a council resolution of authentication.¹⁷ However, that membership roll still contained individuals who were historically connected to the communities in Escambia and Calhoun counties dating back to the original policies of the State of Florida's Northwest Florida Creek Indian Council. While these individuals could demonstrate a relationship to members of the

¹⁶ Constitution of the Muscogee Nation of Florida, 21 January 2001, Muscogee Nation of Florida, Blountstown Office [Hereafter, MNOF-Blountstown].

¹⁷ Ann Tucker to Chief Mason, 8 April 2002, Private Collection of Ann Tucker.

Bruce Community by ties created by marriage and lateral relationships to the original Bruce Community, they were not members of the separate and distinct Bruce Community. Thus, in 2004, the Muscogee Nation Tribal Enrollment Ordinance, *Ordinance #04-01-100* further limited tribal membership to those persons who trace lineal descent from persons whose names appear as founding members of the Bruce Methodist Church between 1912 and 1922, as amended.¹⁸

Throughout these many years, the Bruce Community has maintained a solid knowledge of its localized Tribal leadership, Tribal membership and Tribal identity. While organizations have been created, changed, fluctuated, and even disappeared over the years, the Creek Community whose base lies in the Bruce Methodist Church Rolls from 1912-1922 and the Bruce School has remained unchanged. They are the Indian families represented by the roll and membership files dictated by Ordinance #04-01-100 and re-certified by Tribal Resolution 12-0121.¹⁹

¹⁸ Muscogee Nation of Florida, Tribal Enrollment Ordinance, Ordinance #04-01-100, 7 February 2004, MNOF-Bruce.

¹⁹ Muscogee Nation of Florida Resolution

The Kitto Law Firm

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MEMORANDUM

TO: CHAIRWOMAN TUCKER AND THE MUSCOGEE NATION OF FLORIDA TRIBAL COUNCIL.
FROM: JOSEPH L. KITTO, ESQ.
SUBJECT: LEGAL OPINION
DATE: JULY 30, 2004
CC: CLIENT FILE

The Tribal Council of the Muscogee Nation directed the Kitto Law Firm in coordination with Stetson Jordan Law Offices to address the question of whether Florida state laws, regulations, and policy created an environment that prevented the Tribe from overtly holding itself out since 1900 as an Indian Tribe. We understand that this issue arose during the Tribe's preparation of the revisions document to its petition for federal recognition submitted to the Department of the Interior, Bureau of Indian Affairs, Office of Federal Acknowledgement. Specifically, Section 83.7(a) of the Code of Federal Regulations requires:

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. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members.

- (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.

. The following memorandum details the specific legislative and policy actions taken by the State of Florida concerning its relations with Indian Tribes in Florida during the period beginning 1852 to 1967.

Summary Answer

The State of Florida actively, through legislation, and passively through policy enforcement, attempted to purge individual Indians and Indian communities from its borders, thus preventing Indians from holding themselves out to the public as an Indian Community.

Florida's Legislative Acts Made it Unlawful for Indians to Reside in Florida Unless They Assimilated.

The State of Florida had passed an Act in 1852 that states in part:

It shall be unlawful for any Indian or Indians to remain within the limits of this State, and any Indian or Indians that may remain, or may be found within the limits of this State, shall be captured and sent west of the Mississippi; provided that Indians and half-breeds residing among the whites shall not be included in this section.¹

The Act provides that Indians or Indians would be "captured and sent West of the Mississippi" by the United States or a Regiment created by this Act for this sole purpose. In fact, the majority of the Act deals with the specifics of how the Regiment would be established and operate. While the Act seems to make an exception for those Indians living among whites, there is no explanation as to what the exception meant. It is likely that since some Indians were married to whites and since some such couples had children of mixed blood, this provision was meant to prevent their removal.²

In another Act, passed the same Session, the State Legislature made it unlawful to trade or sell to Indians.³ This Act went far beyond the anti-liquor statutes of many states in that it made it illegal for Indians to receive products or services of any kind. Anyone found in violation of this law was fined up to \$500 and could be sentenced up to six (6) months in prison. (*See id.* §3) Thus, the beginnings of elimination of recognition by an outside entity begins with the threat of fine and imprisonment for economic exchange.

From these two state statutes the identification of Indian ceased to exist in the State of Florida. In the same series of laws passed in 1852 it is clear that the State expected all Indians to be removed from Florida and in anticipation of their "emigration" ensured that none of the laws passed prevented white citizens from purchasing their land or from stopping Negroes among the Indians to determine if there might be a claim of ownership.⁴ From this point forward, Indian people would be designated as Negro, if their skin was dark, Mulatto if they appeared to be lighter skin, or white if they could pass.⁵ The number of cases for violation of the State's fornication laws show that where an individual is identified as Negro in one instance might be identified as Mulatto or even white in another. Visual recognition was the basis for racial designation, but nonetheless Indian was not an option.

¹ See FLA. STAT. CH. 555 §1 (1852).

² FLA. STAT. ch. 538, §4 (1852) (. . . That the trading with the Indians as contemplated by the provisions of the foregoing sections, shall not prevent any of the half-breeds or persons descending from . . . mothers now residing among the whites, from transacting and doing all lawful matters . . .")

³ FLA. STAT. CH. 538, §1 (1852) ("It shall not be lawful . . . to sell, barter, give or loan or in any manner furnish to the Indians remaining . . . or any goods, wares, or merchandise of any description.")

⁴ FLA. STAT. CH. 538, §4 (1852) and FLA. STAT. CH. 537 §1 (1852).

⁵ See letters regarding "passing" as white.

The “chilling” effect this law has had on Indians self-identifying is obvious. For the next several decades this law was enforced as written, however, with the coming of the Civil War, the State of Florida simply would not have the military power to sustain the capture and release terms of the law. Thus, the policy of ignoring Indian as a race was engrained in the governmental system on all levels. In time, the idea that there were no Indians in Florida became a fact despite the unsubstantiated rumors to the contrary.

The Enforcement of Florida Law Resulted in the Elimination of Racial Identification of “Indian.”

The direct impact of eliminating “Indian” as a racial category led to both the State and the individual Indian people themselves to identify Indian people as one of the other available racial designations. Depending on the tone of one’s skin an Indian person might be Negro, Mulatto or white. This designation made the difference of where someone of Indian descent might work, vote or send their children to school. Further, as the 1852 State laws illustrate, only Indians of white descent living among whites could buy basic commodities. Assimilation through re-identification as white was the only option for those unable to manufacturer every needed good or ware necessary to survive.

The only areas where Indian people could self-identify as “Indian” is found in the federal records such as military service or census where “Indian” was an option. So it is that in this racial void Indian Communities existed in secret or in the façade of being another race.

The secondary impacts, and possibly the most devastating, are from the overt actions taken against the individual Indian members and Tribal governments, but rather in the actions taken by the Tribes to avoid their malicious effects. Since Indians living in Florida had become identifiable as Mulatto or White by outside entities, they remained silent about their Indian heritage to avoid discrimination.⁶ The fact that it was still illegal to be Indian until the Civil Rights Act of 1964 meant that threats of punishment remained as real as the day the statutes were first enacted.⁷

Recognition of an Indian Community Not Possible

Since the State of Florida had made it unlawful for an Indian to reside in Florida and since it was a punishable act to trade with Indians that were not captured and removed, the Indian families and communities in Florida did not hold themselves out as Indians. Since they did not hold themselves out as Indians it is impossible that an outside entity (external to the Tribe) would recognize hidden Indian communities. Even where records showed individual Indians willing to identify themselves as Indians at the risk of punishment, the outside entities did not identify Indian Communities.⁸

⁶ Fornication case involving Mr. Scott, wherein he was identified as Negro and the subsequent case involving the same person identified as Mulatto.

⁷ De Grandy v. Wetherell, 794 F. Supp. 1076, 1079 (D. FLA. 1992). (“**Error! Main Document Only.**As recently as 1967, § 350.20, Fla. Stat. provided in part: “The Florida Public Service Commissioners may prescribe reasonable rules and regulations relating to the separation of white and colored passengers in passenger cars being operated in this state by any railroad company or other common carrier.””).

⁸ WWI enlistment records show that many enlistees registered as both white and Indian or Negro and Indian illustrating that Indians in Florida had become accustomed to identifying themselves as a secondary race and since no Indian choice had been available prior, they simply marked both.

Correspondence between School Superintendents and other school systems demonstrates that despite the belief that individuals had Indian blood; the State had no mechanism for this categorization.⁹ In Florida individuals were Negro, Mulatto or white until the passage of the Civil Rights Act of 1964.

While there is evidence of Indian Communities in Florida, it is found not in official recognition but rather peripheral implications.¹⁰

Conclusion

The 1852 laws of the State of Florida initiated the termination of the Indian race. By threat of removal, economic isolation and punishment those remaining had little option but to assimilate. Assimilation as defined in this context meant denial of race. Since the Indians in Northern Florida had little reason to claim their Indian heritage, the existence of communities was held together in secret by people pretending to be white or Mulatto. If the State identified the person as Negro, it was still preferable to being Indian under the law. Meeting Criteria 7(a) of 25 CFR §83.7(a) must be done by the mass of documents supporting the above.

Should anyone have any further questions please feel free to contact me at (202) 686-4856 or at Kitto@kittolawfirm.com. Thank you.

Respectfully,

Joseph L. Kitto, Esq.

⁹ Investigation by the Cherokee Indian School in Pembroke, N.C. as to the status of Mary Frances Porter as a student from the Scott Indian School, but identified in Florida as a Negro.

¹⁰ 1860 Census Taker's report misidentifying an Indian Community as Free Negro. The names on the census report are shown to be Indians not Negros.

Sovereign Systems, LLC

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January 13, 2012

Muscogee Nation of Florida Tribal Council
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278 Church Road
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Dear Muscogee Nation of Florida Tribal Council,

As you may be aware the time has finally come for the Tribes Petition for Federal Recognition to be considered by the Office of Federal Acknowledgment, Bureau of Indian Affairs. Both the initial Petition drafted by Chairwoman Ann Tucker and other Tribal leaders coupled with the additional material prepared by Dr. James McClurken several years ago will constitute the Tribe's "Petition." Because the lobbying effort has not produced a recognition bill on the floor of Congress despite the enumerable visits, countless hours and endless documents expended by Tribal leadership and staff, the petitioning process is the last avenue available.

We have all learned that the Office of Federal Acknowledgement ("OFA") has left the business of performing research to determine whether a petitioning group could qualify for federal recognition status and gone into the practice of finding grounds to reject a petitioning group. It would seem that it's easier to provide a casual no than to work to provide a well-considered yes. The checklist that the OFA uses to carry out this goal can be found at 25 C.F.R. § 83.7. There it lists the seven criterion which are: recognition by an external entity, community, political influence, constitution, membership, evidence that members are not members of another tribe, neither the tribe nor its members were ever congressionally terminated. Many petitioning groups have found themselves unable to meet all seven of the criteria to the fullest application. For example, the criteria that require recognition by an outside party be documented in the petition for every 10 year period since 1900, cannot be met given that the state of Florida in its Session Laws of 1852 made it unlawful for Indians or Indian groups to exist in the state of Florida. In fact, with funds provided by the United States government, the state of Florida financed a paramilitary unit whose orders were to seek out, capture, and then imprison, extradite or execute Indians. The shameful fact that these Session Laws have never been repealed and are only ineffective by virtue of the Civil Rights Act of 1964 evidences the impossibility of meeting the criterion discussed above. Fortunately, there is a provision in the same regulations at 25 C.F.R. § 83.6 that provides, "[Petition reviewer shall take into account historical events and occurrences that would make certain documents impossible to acquire or evidence necessary for the criteria unable to find]". While OFA has not openly employed this provision the language of that regulation is mandatory not discretionary. We will need to compel the OFA reviewers to follow this very important regulation.

With regards to membership criteria OFA requires that the petitioning group provide evidence of a single, cohesive, interacting community that was under a single political influence this is not the historical formation of the Muscogee Creek Nation. Further complicating matters, the type of evidence required is only available for one community. Based on this difficulty I'm advising the Tribal leadership to submit the Petition with only the Bruce Community as the basis for the initial membership role. This advice is in consideration of the following:

1. Courts and Congress have repeatedly acknowledged that the preference is for the Tribes to create and maintain their own membership list.
2. After recognition the Tribe will have the authority to adopt a constitution where the membership criteria are not so restrictive.
3. When first faced with this problem the Tribe responded by proving the lineage of everyone on the current membership list whether they be from Bruce or not.

Finally, it is my opinion and my advice that Muscogee Nation of Florida should submit its petition for Federal Recognition membership roll containing only the names of those members identifying with the Bruce Community and that the remaining members be listed as laterally related members to be added post recognition.

Attached to this letter please find a copy of the Session Laws referred to herein and my legal memoranda discussing the impacts of those Session Laws on the Muscogee Nation of Florida.

Thank you for your confidence and continued steadfastness. Please feel free to contact me at (707) 533-3502 if you have any questions or comments.

Sincerely,

A handwritten signature in black ink that reads "Joseph L. Kitto". The signature is written in a cursive, slightly slanted style.

Joseph L. Kitto, Esq.