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September 10, 1976

Dear Louie:

Since the President's memorandum of August 26, designating me to help in the coordination of Indian policies and programs, I have reviewed very carefully the papers and background concerning the request of the traditional chiefs and headmen for a "Presidential Treaty Review Commission". I have gone over the notes of our two-day meeting at Harper's Ferry in June and the earlier meeting and luncheon we had with Chief Fools Crow here at the White House. I have re-read Larry Red Shirt's letter of June 14, 1976 where, in the attachment, he indicates he wants the President to "approve and support the concept of the Presidential Treaty Review Commission".

What I am still trying to get clear -- and I need your help in doing this -- are specific details about the precise functions of such a Commission, its authority, responsibilities, membership, funding, reporting deadline and the proposed procedures for holding sessions.

I must explain that there are very strict standards for staff work which all modern Presidents impose here within the White House. Before a Presidential decision is made, a memorandum must go to the President spelling out exactly what is being requested, the pros and cons of why it is needed, and very specific descriptions of what the President is being asked to approve. Laws or other authorities must be indicated to show that the President has the power to take the requested action and to show that if he creates some body or institution, even a temporary one, he has the further authority to fund it.

This may seem a bit elaborate, but I assure you it is an essential aspect of the modern Presidency. The Congress, the General Accounting Office or the Courts are very quick to object to any Presidential action which is not within the law; President Ford insists on making sure, ahead of time, that he is never put in that position. That means memoranda which are in writing and which are prepared with great precision.



My careful review of your proposal for a "Presidential Treaty Commission" gives me practically nothing on the basis of which to prepare such a memorandum to the President. In addition to the questions raised above, there are others which come to mind about your proposal: would such a Commission for example, review Indian treaties generally or be limited to the 1868 Fort Laramie Treaty? In either case, what would be such a Commission's relationship with the elected Tribal leaders, generally or with those of the Pine Ridge Sioux? What would be the Commission's relationship with Task Force I of the American Indian Policy Review Commission, which currently is reviewing all the Indian treaties?

What is lacking in Mr. Red Shirt's letter, and in the letter to the President from the traditional chiefs and headmen of July 24, 1976, are any specifics of this sort.

As you know, Mrs. Kilberg and I have already informed the traditional chiefs at our Harper's Ferry meeting that a Treaty Review Commission could not assume a treaty-negotiating role, since that is proscribed by Congress pursuant to 25 USC 71.

With respect to implementation, specifically, of the Treaty of Fort Laramie of 1868, you remember that we have called to the attention of the traditional chiefs and headmen the letter to them from the Assistant to the President of January 8, 1974. This letter and its detailed attachment answered a series of fifteen questions which the chiefs propounded about the 1868 Treaty -- pointing out that the United States has "never disclaimed or declared invalid the 1868 Treaty as a whole"-- but that "portions have been modified, revoked, superceded or satisfied: -- in most cases by the Congress or the Courts. That letter was an exhaustive discussion of the Treaty of 1868 and its aftermath (other than the pending Claims Commission action) and I honestly don't think there is anything the Executive Branch can add to it.

Mr. Richard Parsons, I notice, has also responded to the Lakota Treaty Council on April 1, 1976 that the President cannot, as they suggested, stop the Indian Claims Commission action with respect to the same Black Hills Case.

In view of these facts, my colleagues in the White House and I are quite unclear as to what the functions of a Presidential Treaty Review Commission would be that have not already been handled in law in Claims cases or in past correspondence.



This letter is therefore a request for your assistance; please consult with your associates and respond in writing and in detail about the need, the authority, the make-up, and the functioning of the proposed Treaty Review Commission. I assure you in return that we here, together with the Secretary of the Interior and the Attorney General -- who also would naturally be consulted by the President on this matter -- will then go over your material carefully and will get a Presidential decision, as you have requested.

Sincerely,

Bradley H. Patterson, Jr.

Mr. Louis Bad Wound
Pine Ridge Reservation
South Dakota