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**Hearing
Before the
United States
Commission on Civil Rights**

**AMERICAN INDIAN ISSUES
IN THE STATE OF SOUTH DAKOTA**

Hearing Held in

**RAPID CITY,
SOUTH DAKOTA**

July 27-28, 1978

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

MEMBERS OF THE COMMISSION

Arthur S. Flemming, *Chairman*

Stephen Horn, *Vice Chairman*

Frankie M. Freeman

Manuel Ruiz, Jr.

Murray Saltzman

Louis Nuñez, *Acting Staff Director*

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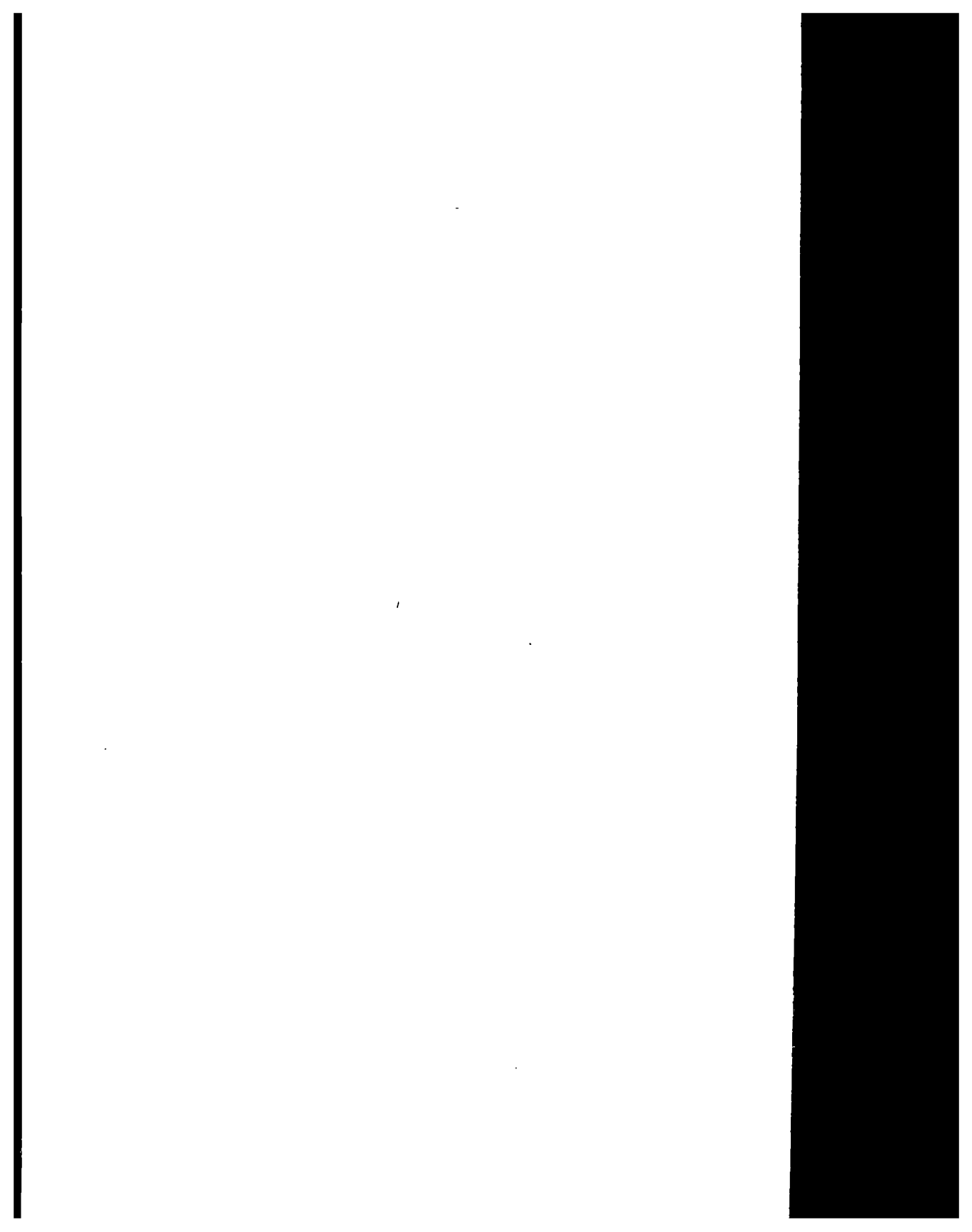
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UNITED STATES COMMISSION ON CIVIL RIGHTS

Thursday, July 27, 1978

The public hearing was convened, pursuant to notice, at the Mount Rushmore Civic Center, Rapid City, South Dakota, Arthur S. Flemming, Chairman, presiding.

Present: Arthur S. Flemming, Chairman; Frankie M. Freeman, Commissioner; Louis Nunez, Acting Staff Director; Richard Baca, General Counsel; Paul Alexander, Assistant General Counsel; Shirley Hill Witt, Regional Director; Jack Hartog, Counsel; Linda Huber, Counsel; Marvin Schwartz, Counsel; and William Levis, Regional Counsel.

PROCEEDINGS

CHAIRMAN FLEMMING. Come to order, please.

The function of the U.S. Commission on Civil Rights is to investigate deprivation of equal protection of the law and to submit its findings to the Congress and to the President along with the recommendations the Commission decides to make for corrective action. To enable the Commission to fulfill these duties, the Congress has empowered it to hold public hearings and issue subpoenas for the attendance of witnesses and for the production of documents.

This hearing is being held under the authority of the Civil Rights Act of 1957 as amended. As required by law, notice of the hearing was published in the *Federal Register* on June 23, 1978. A copy of this notice will be introduced into the record at this point as Exhibit No. 1.

The purpose of this hearing is to listen to evidence relative to Indian tribes and tribal people and non-Indian governments and people and, also, to consider evidence relative to Indian governments and non-Indian governments working together to arrive at constructive solutions of common problems.

The Commission on Civil Rights is an independent bipartisan agency of the U.S. Government established by Congress in 1957. Its duties are the following;

To investigate sworn allegations that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin;

To study and collect information regarding legal developments which constitute denial of equal protection of the laws under the Constitution in such fields as voting, education, housing, employment, and use of public facilities, transportation, or in the administration of justice;

To serve as a national clearinghouse for information with respect to denial of equal protection of the laws because of race, color, sex, religion, or national origin;

Finally, to investigate sworn allegations of vote fraud in Federal elections.

The session we begin today will be a public session. The majority of the witnesses we will hear have been subpoenaed by the Commission, and the schedule, as you note from the agenda, has been planned in advance. There will be, however, on Friday afternoon, a session at which persons who have not been subpoenaed, but who feel they have relevant testimony may appear and speak. Anyone desiring to speak at this session should contact staff and make appropriate arrangements.

Under the law under which we operate, the Chairman of the Commission is authorized to designate two members of the Commission to hold a public hearing, provided both political parties are represented.

In connection with this hearing, I am joined by Commissioner Freeman. Ms. Freeman is a resident of St. Louis. She has served on the U.S. Commission on Civil Rights longer than any other member, having been appointed by President Johnson and having served continuously since then. She is a recognized outstanding trial lawyer from St. Louis. I'm happy to recognize Commissioner Freeman at this time so she can acquaint you with the rules and the procedures which will be followed in connection with this hearing. Commissioner Freeman.

COMMISSIONER FREEMAN. Thank you.

At the outset I should emphasize that the observations I'm about to make on the Commission's rules constitute nothing more than brief summaries of the significant provisions. The rulings themselves should be consulted for a fuller understanding. Staff members will be available to answer questions which arise during the course of the hearing.

In outlining the procedures which will govern the hearing, I think it is important to explain briefly a special Commission procedure for testimony or evidence which may tend to defame, degrade, or incriminate any person. Section 102(e) of our statute provides, and I quote:

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony in executive session.

The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony.

When we use the term "executive session," we mean a session in which only the Commissioners are present in contrast to a session such as this one in which the public is invited to be present. In providing for an executive or closed session for testimony which may tend to defame, degrade, or incriminate any person, Congress clearly intended to give the fullest protection to individuals by affording them an opportunity to show why any testimony which might be damaging to them should not be presented in public. Congress also wished to minimize damage to reputations as much as possible and to provide persons an opportunity to rebut unfounded charges before they were well publicized.

Therefore, the Commission, when appropriate, convenes an executive session prior to the receipt of anticipated defamatory testimony. Following the presentation of the testimony in executive session, and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. Next, if we find the testimony to be of insufficient credibility, or the opposition to it to be of sufficient merit, we may refuse to hear certain witnesses, even though those witnesses have been subpoenaed to testify in public session.

An executive session is the only portion of any hearing which is not open to the public. The hearing which begins now is open to all, and the public is invited and urged to attend all the open sessions.

All persons who are scheduled to appear who live or work in South Dakota or within 50 miles of the hearing site have been subpoenaed by the Commission. All testimony at the public sessions will be under oath and will be transcribed verbatim by the official reporter. Everyone who testifies or submits data or evidence is entitled to obtain a copy of the transcript on payment of costs. In addition, within 60 days after the close of the hearing, a person may ask to correct errors in the transcript of a hearing of his or her testimony. Such requests will be granted only to make the transcript conform to testimony as presented at the hearing.

All witnesses are entitled to be accompanied and advised by counsel. After the witness has been questioned by the Commission, counsel may subject his or her client to reasonable examination, within the scope of the questions asked by the Commission. He or she also may make objections on the record and argue briefly the basis for such objections.

Should any witness fail or refuse to follow any order made by the Chairman or the Commissioner presiding in his absence, his or her

behavior will be considered disorderly, and the matter will be referred to the U.S. Attorney for enforcement, pursuant to the Commission's statutory powers.

If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person, or his or her counsel, may submit questions, which, in the discretion of the Commission, may be put to the witness. Such person also has a right to request that the witnesses be subpoenaed on his or her behalf. All witnesses have the right to submit statements prepared by themselves or others for inclusion in the record, provided they are submitted within the time required by the rules.

Any person who has not been subpoenaed may be permitted, in the discretion of the Commission, to submit a written statement at this public hearing. Such statement will be reviewed by the members of the Commission and made a part of the record.

Witnesses at Commission hearings are protected by the provision of Title 18, U.S. Code, section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings. The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses. Let me emphasize: We consider this to be a very serious matter, and we will do all in our power to protect witnesses who appear at this hearing.

A copy of the rules which govern this hearing may be secured from a member of the Commission staff. Persons who have been subpoenaed have already been given their copies. Finally, I should point out that these rules were drafted with the intent of ensuring that Commission hearings be conducted in a fair and impartial manner. In many cases, the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have done that in the belief that useful facts can be developed best in an atmosphere of calm and objectivity. We hope such an atmosphere will prevail at this hearing.

With respect to the conduct of persons in this hearing room, the Commission wants to make clear that all orders by the Chairman must be obeyed. Failure by any person to obey an order by Dr. Flemming or the Commissioner presiding in his absence will result in the exclusion of the individual from this hearing room and criminal prosecution by the U.S. Attorney when required. The Federal marshals stationed in and around this hearing room have been thoroughly instructed by the Commission on hearing procedures, and their orders also are to be obeyed.

This hearing will be in public session on Thursday and Friday of this week. The sessions will begin at 8:30 a.m. and will continue until 6:15 p.m., with a 1-hour break for lunch. On Friday, the final day of this hearing, the session will begin at 8:30 and continue to 6 p.m. The time between 4 p.m. and 6 p.m. has been set aside for testimony from per-

sons who have not been subpoenaed but wish to testify. As noted by Chairman Flemming, persons wishing to appear at the open session should be in contact with members of the Commission staff in Room 201 throughout today and until 12 o'clock noon Friday. Such persons will be heard in the order in which they signed up. I wish to repeat, the time between 4 p.m. to 6 p.m. has been set aside for testimony from persons who have not been subpoenaed but wish to testify. Persons wishing to appear in the open session should be in contact with members of the Commission staff in Room 201 throughout today and until 12 noon tomorrow.

Thank you.

CHAIRMAN FLEMMING. Thank you, Commissioner Freeman.

At this time, it is my privilege to recognize the Vice Chairperson of the U.S. Commission on Civil Rights' Advisory Committee for the State of South Dakota, Mary Ellen McEldowney. As she comes to the witness table, may I, on behalf of Commissioner Freeman, Mr. Nunez, our Acting Staff Director, and all of our colleagues on the Commission, express our very deep appreciation for the outstanding help and assistance that we have received from the South Dakota Advisory Committee. I want to express in particular our appreciation for the report that has been developed by the South Dakota Advisory Committee dealing with many of the issues that will be under consideration in connection with this hearing. Ms. McEldowney has been joined by Mr. Stanford Adelstein, also a member of the State Advisory Committee. I understand that he will make a brief opening statement in behalf of the Chairperson, Mario Gonzales, who is unable to be present today. At this time, I'm very happy to recognize Mr. Adelstein.

WELCOMING STATEMENT OF STANFORD ADELSTEIN, MEMBER, SOUTH DAKOTA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

MR. ADELSTEIN. Good morning, Chairman Flemming, Chairman Freeman, Commission staff, ladies and gentlemen in our audience this morning. I am Stanford Adelstein of the South Dakota Advisory Committee to the U.S. Commission on Civil Rights. On behalf of the Advisory Committee, I would like to welcome each of you to South Dakota, to Rapid City, and to this hearing.

The members of the Advisory Committee who are also present here this morning, as I see them, Dorothy Butler—

CHAIRMAN FLEMMING. As your names are called, we would appreciate your standing, so that we can recognize you.

MR. ADELSTEIN. Barbara Bates Gunderson, Mary McEldowney, in just a moment—David Volk I see is here. William Walsh is here. Robbi Ferron—is Robbi in the room? In addition, of course, we have our Chairman, who is not here this morning, Mario Gonzales. Robbi Ferron, Grace Kline, Eric J. LaPointe, Hilario Mendoza, Rev. Frank M. Thorburn, all of whom have worked closely together during the period

of our first report, and while we don't always agree, we have a great camaraderie and a sense of purpose.

The Advisory Committee was established by the U.S. Commission on Civil Rights to assist the Commission at the State level in factfinding and the development of appropriate recommendations. Our State Advisory Committee feels strongly about its existence and about the importance of the Advisory Committees at the State level.

More than 3 years ago, our Advisory Committee agreed to begin a study of the quality of justice available to Indians in the State of South Dakota. Our carefully considered and weighed decision to act in this area was based on our individual and group personal observations of the justice system at work in the State, on reports and complaints we received, and on the statistics which were then available. We were convinced they pointed to a wide range of unique problems which appeared to confront Indian persons in the process of administration of justice. We knew our survey might not be universally popular because we were aware that the situation would require that we would be looking and looking hard at the police and the courts and studying their involvement with Indians.

Because of time and resources, we limited our inquiry to two separate geographic areas: Pennington County, where we are today, allowed us to examine criminal justice practices in a largely urban setting, and Charles Mix County, a rural setting.

Members of the Advisory Committee and Commission staff from the Rocky Mountain Regional Office in Denver traveled throughout the State and interviewed more than 130 officials, law enforcement officers, attorneys and prosecutors, members of the judiciary, and citizens. In December 1976 the Committee held a lengthy public discussion and public factfinding in Rapid City. We received unsworn testimony from more than 50 persons, many at great length. Our work resulted in a release of a report entitled *Liberty and Justice for All*. We issued findings and 22 carefully weighed and discussed recommendations for change. These were directed to State and local officials and agencies. Copies of that report are available here today, and we urge you, please, to study the findings and recommendations. They may not be universally accepted. We find they are often not popular. However, we believe strongly in these recommendations.

Governor Kneip and a number of other officials to whom recommendations were directed have responded. Some responses have been positive, some negative. We have been pleased that some of the recommendations have in fact been implemented; others are under study. I personally feel confident our work has led to some serious thinking, even more serious rethinking, and certainly many new and creative approaches to problems. Most important, though, is that we believe the report has led to some alleviation of problems that were outlined in the report.

In a few moments, Mary Ellen McEldowney, Vice Chairman of the South Dakota Advisory Committee, will speak. I understand her remarks will include a discussion of our findings and recommendations. The hearing which begins here today stems at least in part from our requests to the Commission on Civil Rights for further studies of the issues identified in our report. The Commission has responded and is prepared to examine in considerable detail the overall situation of Indians in the State of South Dakota and the consequent impact on the administration of justice. We are very appreciative, really very appreciative of the presence of the Commission here today and the vast amount of staff work that already has been carried out. We believe that the testimony received here today and tomorrow will be of great benefit to the citizens of our State and hopefully to the Nation.

Let me introduce Mary Ellen McEldowney. I must say that she is an attorney, but an attorney of unusual perception, sensitivity.

**STATEMENT OF MARY ELLEN MCELLOWNEY, VICE CHAIRPERSON,
SOUTH DAKOTA ADVISORY COMMITTEE TO THE
U.S. COMMISSION ON CIVIL RIGHTS**

Ms. MCELLOWNEY. Thank you, Stan.

Good morning. I am Mary Ellen McEldowney, Vice Chair of the South Dakota Advisory Committee to the U.S. Commission. I am pleased to be here today, but even more pleased the Commission is here today. I look forward with considerable interest to hearing the testimony for the 2 days that you will be here and hope I will be able to spend much of the time with you. Also, I hope the members of the audience will be able to spend the better part of the 2 days so that we will all get a full picture of what you will be hearing.

I believe the hearing which begins today is important to all of us in the State. The hearing will examine how and where Indians and non-Indians are involved in governing, settling disputes, and working cooperatively. The hearing will examine how Indians and non-Indians view each other and will outline the nature of their day-to-day contacts. No doubt there will be evidence of both success and failure. Obviously, there are problems in this State which continue to confront us as Indian and non-Indian peoples. Our recollections of history, our lives as Indians and non-Indians have been different. But there is much of life here that is common to every one of us.

In South Dakota, and I am a native of South Dakota, there still exists a tradition of oral history which lends to our lives a strong sense of contact with the extraordinary events which took place here during the last centuries. In many ways, what we know of history begins with what we learn from our grandparents and great-grandparents when they told us of the days they lived through. That history, then, I believe, is a necessary backdrop to the testimony we will hear today and tomorrow. While I in no means am an expert in the area of Indian history, in this area I will be sharing with you my understanding of, with a brief overview, of where we have come from.

The story of the native peoples on this continent begins before recorded history, but from the time of the first arrivals of Europeans as colonists, expansionist pressures were already building which would eventually be felt halfway across this continent by the Sioux Indians. Almost from the beginning, European settlement began to push westward in search of land, furs, and trade. Inevitably, the presence of whites in Indian country led to tension and conflict. Some Sioux began to move west. By 1750 there were Sioux already living in the Black Hills area and other parts of South Dakota.

The Sioux Nation, as you may know, divided itself into three groups, and they defined the groups by the dialect they spoke; the Lakotas, generally known to have gone west of the Missouri River; the Nakotas and the Dakotas, who remained on the east bank of the Missouri River. The land area in which the Sioux were found at any given time was immense. They traveled and hunted over a territory which ranged all the way from Hudson's Bay to the Gulf of Mexico and between the Alleghenies and the Rockies.

At the end of the War of 1812, various groups of Sioux entered into the first treaties between themselves and the United States. These treaties were sought by the Government in Washington as a means of establishing legal grounds for exploration, trade, and obtaining land. The pressure of white settlement and military action were powerful inducements to the tribes to engage in treaty-making with the United States. Also, since the Sioux culture did not share the European concept of land ownership, often there was no mutual understanding of the full ramifications of the various treaties. While the Western concept was that an individual could own a parcel of land outright, in fee simple; the Sioux concept was that the land was not subject to ownership by individuals or groups; rather it was there for the common use.

Step by step the Sioux land base was eroded. In 1851 the eastern Sioux, under pressure from advancing settlement and treaty negotiators, moved onto reservations and lost to the Government half the present State of Minnesota and much of Iowa for about 6 cents an acre. Meanwhile, in 1851 the Government was dealing with the western Sioux in a different manner and signed the first Treaty of Fort Laramie, declaring it then a Sioux Nation. The treaty outlined the Sioux Nation as occupying vast sections of present-day South and North Dakotas, Montana, Wyoming, and western Nebraska.

During the 1850s the Sioux tried to resist the encroachment of the settlers who were attempting to move through the Indian homelands and hunting grounds. To the east of the Missouri River, the Santee Sioux and others in Minnesota carried out a short-lived rebellion, known as the "Minnesota Uprising," against the Government's failure to provide adequate payments for land and its "let them eat grass" attitude. Army troops moved in and crushed the rebellion and, following the Civil War, the Federal Government pressed the Sioux in the West to yield land for wagon routes and the railroads. The Sioux fought