

**Statement of Alonzo Coby, Chairman of the Fort Hall Business Council
for the
Shoshone-Bannock Tribes**

Hearing on S. 797, the Tribal Law and Order Act of 2009

Senate Committee on Indian Affairs

June 25, 2009

Good afternoon Chairman Dorgan, Vice-Chairman Barrasso, Senator Crapo, and other Members of the Committee. My name is Alonzo Coby and I am the Chairman of the Fort Hall Business Council, which is the governing body of the Shoshone-Bannock Tribes located on the Fort Hall Indian Reservation in southeast Idaho. I am honored to be here today to provide our views on S. 797 and to discuss the law enforcement needs of the Shoshone-Bannock Tribes.

The Shoshone-Bannock Tribes are a federally recognized Indian tribe organized under the Indian Reorganization Act of 1934. The Shoshone and Bannock people are comprised of several related bands whose aboriginal territories include land in what are now the states of Idaho, Wyoming, Utah, Nevada, Colorado, Oregon, and parts of Montana and California. In 1867, President Andrew Johnson by Executive Order designated the Fort Hall Indian Reservation for various Shoshone and Bannock bands that occupied the area since time immemorial. On July 3, 1868, the Shoshone and Bannock Tribes concluded the Second Treaty of Fort Bridger, which was ratified by the United States Senate on February 24, 1869. Article 4 of the Fort Bridger treaty reserved the Reservation as a “permanent home” to the signatory tribes. Although the Fort Bridger Treaty called for the Reservation to be approximately 1.8 million acres, various “surveying errors” in 1873 reduced its actual size to approximately 1.2 million acres.

One of the United States' purposes in setting aside the Fort Hall Indian Reservation was to protect the Tribes' rights and to preserve for them a home where their tribal relations might be enjoyed under shelter of authority of the United States. Subsequent cession agreements with the United States reduced the Fort Hall Indian Reservation to the present day size of 544,000 acres. Of the 544,000 acres, 97% of the land is Tribal land or held by the United States for the benefit of the Tribes or its individual members. The Tribes' territory is the largest Reservation in Idaho and forms a large cohesive geographic area that supports a population of over 6000 people and provides an irreplaceable homeland for economic activity and cultural practices based on strong religious traditions premised on the sacredness of land. Our current Tribal membership is approximately 5,300 members.

The Fort Hall Reservation is blessed with an extensive biodiversity including rangelands, croplands, forests, streams, three major rivers (the Snake, Blackfoot, and Portneuf), reservoirs, springs, and wetland areas, an abundance of medicinal and edible plants, wildlife (elk, deer, moose, bison, big horn sheep, etc.), various species of fish, birds, and other animal life. The Reservation lands are mountainous and semi-desert, and overlay the Snake River aquifer, a large groundwater resource. The culture and continued existence of the Shoshone and Bannock peoples depend on these resources.

As you know, the United States government and its agencies have an important trust relationship with Indian tribes. The Shoshone-Bannock Tribes look to the federal government to fulfill this trust responsibility in areas of law enforcement, environmental protection, health, education, trust reform, land management, protection of treaty rights, and other areas of common concern to Indian County.

The issue I speak about today is law enforcement in Indian Country, and specifically within the boundaries of the Fort Hall Reservation. First, I would like to commend Senator Dorgan on his efforts to address law enforcement in Indian Country in a meaningful and effective way. Senator Dorgan and members of this Committee have held several hearings on this issue, and we commend the Committee Chairman and co-sponsors of the Tribal Law and Order Act of 2009 for their efforts to address the law enforcement needs in Indian Country. We particularly appreciate that Senator Crapo, our Senator from Idaho, recently became a co-sponsor of the Tribal Law and Order Act as well as all his other efforts on our behalf. He has been a good friend to the Tribes.

S. 797 contains acknowledgements that the United States has a trust obligation to provide for the public safety of tribal communities and that tribal justice systems are the most appropriate institutions for handling law and order in tribal communities. The present status of Indian Country law enforcement has resulted in unsafe communities, victimization of Reservation families, promoted drug trafficking, and has deterred economic development.

The Fort Hall Reservation faces many law enforcement challenges common within Indian Country. Tribal communities suffer from misdemeanor and felony crimes committed on the Reservation that often go unprosecuted because of the lack of federal resources or the jurisdictional limits placed on our Tribal Courts. In many cases, the lack of prosecution by federal and state authorities remains unexplained to Tribal leaders and the crime victims. For example, when a Shoshone-Bannock Tribal member mother and her infant child were brutally murdered on our Reservation, federal prosecutors struck a plea deal and declined to prosecute the defendant for the infant's death without first consulting the Tribes or explaining their decision to

our Tribal leaders.¹ On another occasion, where an individual eligible for adult prosecution raped a young child on the Reservation, the federal government refused to prosecute the case because the State was handling the case in juvenile State court under Public Law 280. And, more recently, federal prosecutors did not consult the Tribes or explain their decision not to prosecute suspects who killed a man on the Reservation by inflicting blunt force trauma to his head at a party. The unexplained failure to prosecute serious felonies on the Reservation gives the Tribal membership the impression that it is ok to commit serious crimes against Indian people on the Reservation.

While our Fort Hall Tribal police officers are well-qualified and properly trained to respond to all crime on the Reservation, Tribal police are presently limited in their ability to arrest all persons who violate applicable Tribal and federal laws and more officers are needed to address the law enforcement needs on our large Reservation. Many times our tribal police only have two officers available at any given time to cover half a million acres of Reservation territory.

Effective law enforcement on our Reservation requires greater federal support for training, equipment, and access to the investigation and crime database tools available to federal and state law enforcement officers. Greater coordination and cooperation is needed between federal officials and Tribal law enforcement personnel. Local federal prosecutors need additional resources to fill jurisdictional gaps and to more fully prosecute Reservation crime that falls within federal jurisdictional statutes.

The provisions of S. 797, known as the Tribal Law and Order Act of 2009, address many of the law enforcement problems we experience on our Reservation. The bill provides for

¹ See United States v. Abel Hidalgo, Cr. No. 02-043-E-BLW (Idaho Federal District Court)

increased consultation and coordination between the federal government and tribes. It facilitates greater prosecution of Reservation crimes and provides for accountability for decisions not to prosecute crimes in Indian Country. The bill also establishes federal offices and funding sources specifically committed to Tribal law enforcement purposes. We are pleased that the bill specifically targets resources towards drug enforcement, tribal youth, and violence against women.

Further, we support section 401 of the bill which directs the Substance Abuse and Mental Health Administration to take the lead role in interagency coordination on tribal substance abuse programs and in setting up the Office of Indian Alcohol and Substance Abuse. In the past, it has been difficult to access assistance from the various federal agencies to address the behavioral and mental health problems in our community, which often lead to alcohol and drug abuse and criminal activity, given the stove pipe and bureaucratic nature of agencies that administer federal alcohol and substance abuse programs. With SAMSHA designated as the lead agency on these issues, there will be clarity for tribes seeking this type of assistance and within the federal government in terms of the role that each agency plays on these issues.

Importantly, the proposed bill recognizes the qualifications of Tribal law enforcement personnel to obtain the training and certification to act as federal law enforcement agents within the Reservation boundaries. And, the bill provides for increased tribal court sentences of up to 3 years for serious crimes committed within Indian Country.

The Tribal Law and Order Act also prioritizes and increases funding for the construction of tribal detention centers under the DOJ Tribal Jails Program and would provide authorization for grants for the construction of juvenile detention and treatment centers and halfway houses under the Indian Alcohol and Substance Abuse Act. The current buildings used for the Fort Hall

Tribal police station, jail, and Tribal Court are extremely old, nearly uninhabitable, out of code, and grossly insufficient for tribal law enforcement needs. Our present detention facility should be condemned. For example, on a recent tour of the Tribal jail there was only one shower and two toilets in working order and the entire facility reeked of raw sewage. The detention space is totally inadequate for the number of inmates ordered to serve detention, and it cannot be used for current needs and certainly not the increased sentences provided for by the proposed law and order bill. The inadequate detention facility poses health and safety risks that cannot continue in our Reservation community. The general lack of tribal justice buildings creates a backlog of hearings, inefficient case processing, and leaves Reservation residents without places to conduct hearings, mediations, and family consultations.

Because of our Tribes' dire need for an adequate law enforcement building, the Shoshone-Bannock Tribes independently undertook the financing and construction of a Tribal Justice Center. The Tribes previously sought funding from the BIA and other federal agencies for many years without success for this project. The Tribes borrowed over 19 million dollars to construct the Justice Center that will house the Tribal police department, Tribal Courts, Fish & Game, and separate adult and juvenile detention facilities. While we are happy to report that the Justice Center is expected to be completed in December of this year, we are in need of immediate federal assistance for start up costs and annual operational costs for the Justice Center. This funding should come in the form of enhanced 638 contracts for adult and juvenile corrections, law enforcement, and tribal courts as well as a new 638 contract for operations and maintenance for the Justice Center. We extend our gratitude to Senator Crapo and the other members of the Idaho congressional delegation, Senator Risch and Representatives Mike Simpson and Walt Minnick, for recently sending a letter to Secretary Salazar asking him to assist the Tribes in

immediately securing annual operational and maintenance costs for the Justice Center from the federal government.

The Justice Center now under construction will allow adult and juvenile inmates to remain in a local community facility that will accommodate educational and rehabilitation services connected to our Indian culture and traditions. I note that the Shoshone-Bannock Justice Center will have bed space for the BIA to utilize to detain inmates from other reservations, and the Tribes are willing to have the BIA designate the Justice Center as one of the regional detention facilities identified in the proposed Tribal Law and Order Act.

While our Reservation's law enforcement problems will be addressed in part by the Tribal Law and Order Act, they are also the unfortunate product of the State of Idaho's assumption of partial jurisdiction over our Reservation affairs through Public Law 280. Public Law 280 is an antiquated law passed in 1953 during a time period when the policy of the United States was to terminate Indian tribes. This law allowed States to take, without tribal consent, jurisdiction over Indian affairs that should always have remained matters of Tribal self-government and the federal trust responsibility and jurisdiction.² Pursuant to Public Law 280, Idaho passed a law assuming concurrent jurisdiction over seven areas of jurisdiction in Idaho including juvenile delinquency, domestic relations, and traffic jurisdiction on state and county maintained roads.³

² The United States Congress subsequently passed Public Law 90-284 in 1968, requiring that the states desiring to assume jurisdiction after 1968 could do so only with the consent of the tribe affected. Pub. L. No. 90-284, §§ 401, 402, 82 Stat. 78, 79 (1968) (codified in relevant part at 25 U.S.C. §§ 1321, 1322 (1997)). Since that date, no tribe has consented to significant state jurisdiction over their reservations. In contrast, a number of states surrounding Idaho have "retroceded" or given back to the federal government and tribes the jurisdiction taken pursuant to Public Law 280.

³ The seven areas of concurrent jurisdiction assumed by the State of Idaho pursuant to Public Law 280 include: compulsory school attendance; juvenile delinquency; dependent, neglected or

Because of Public Law 280, Shoshone-Bannock Tribal members and Indian residents continue to face the assertion of State court jurisdiction over Reservation traffic offenses and domestic relations and receive unequal treatment in sentencing due the present system of confusing jurisdictional rules that apply to our Reservation. The Fort Hall Reservation also currently struggles to address juvenile delinquency through a Tribal system that lacks adequate support from the federal government or the State of Idaho. The State of Idaho has neglected its responsibility for juvenile matters within its assumed jurisdiction under Public Law 280. Further, the federal government, through the BIA, in the past has been reluctant to provide assistance to the Tribes for detention and rehabilitation of juveniles and has articulated the rationale that the State of Idaho should be providing this assistance under Public Law 280 and Idaho state laws pertaining to juvenile delinquency. Even though the jurisdiction set forth under Public Law 280 and Idaho state laws allows for concurrent jurisdiction over juvenile delinquency, the BIA has pointed to the State of Idaho as the entity responsible for juvenile delinquency matters while the State of Idaho utterly disregards these responsibilities. Due to the confusion created by Public Law 280 and Idaho state laws and lack of will at the state and federal levels, the needs of the Shoshone-Bannock Tribes and its troubled youth have gone unaddressed for far too long.

For example, the Ft. Hall Indian Reservation is located within the counties of Bannock and Bingham, but both counties have refused to lend assistance with Native American juvenile runaways unless they commit crimes off the Reservation. Six months ago, a 16-year old Native American girl known to be a drug user ran away from home, and Tribal police contacted the Bingham County prosecutor to ask if the county would assist in finding her. The county

abused children; mental illness; public assistance; domestic relations; and vehicle operation on county or state-maintained roads. Idaho Code §§ 67-5101 to 67-5103.

prosecutor, Scott Andrew, stated that, unless she committed a crime off the Reservation, they would not get involved in trying to locate her. Bannock County also has the same policy. Further, Bannock County policy is to only house Native American juveniles in its jail at \$150 a night if there is room in the jail.

As you can see, issues such as these create many challenges for the Shoshone-Bannock Tribes in ensuring for public safety on our Reservation and for the safety of our people due to the failure of the federal and state governments to meet their responsibilities to assist us. Consistent with the principle of tribal sovereignty and self-determination, the Shoshone-Bannock Tribes seek to obtain retrocession of the jurisdiction taken by the State of Idaho without the Tribes' consent. We would appreciate assistance from this Committee on our retrocession efforts given that it directly impacts our ability to provide basic services designed to meet the health, safety, and well-being of our people. With the construction and proper funding of the Justice Center, the Shoshone-Bannock Tribes are willing and qualified to fully assume responsibility over Reservation affairs while working together with the federal government as our trustee.

In sum, I am happy to express support for the proposed Tribal Law and Order Act of 2009 and the significant measures contained therein to address the serious law enforcement problems facing the Fort Hall Reservation and Indian Country in general. Thank you for this opportunity to participate in this hearing on this critically important subject.