

TESTIMONY OF
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BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
REGARDING S. 797—TRIBAL LAW AND ORDER ACT OF 2009

Good afternoon Chairman Dorgan, Vice Chairman Barrasso and Members of the Committee. I deeply appreciate this opportunity to offer my thoughts and remarks regarding S.797, the Tribal Law and Order Act of 2009. By way of introduction, I am Ted Quasula, an enrolled member of the Hualapai Tribe in Arizona. The reservation consists of nearly 1 million acres, and the tribal enrollment is about 2,500. The Hualapai Tribe is also home of the Skywalk, a glass bottomed walk way over the west end of the Grand Canyon.

I have spent most all my entire adulthood in law enforcement, beginning as a patrol officer in the City of Flagstaff, Arizona. After a couple of years I moved on to the Bureau of Indian Affairs as a criminal investigator and eventually moved up the ranks, becoming director for the last 10 years of my 26 year career in the BIA. After retirement from federal service in 2001, I started a consulting business to work with Indian criminal justice systems. However, I still had the itch to be in active law enforcement so I became chief of police for the Las Vegas Paiute Tribe for the next five years. It is a small tribe, but its location in downtown Las Vegas kept things pretty lively as you can imagine.

I have tracked the formation of S.797 since Chairman Dorgan sent a letter to tribal leaders with a concept paper back in November 2007. I commend this Committee and its staff for the listening sessions, meetings and previous hearings on what could be the most comprehensive and complete legislation ever to modernize Indian Country criminal justice systems. There was considerable thought and effort that went into the formation of the bill. On June 12, 2008, Senator Dorgan, Senator Thune, Senator Johnson and Senator Tester signed a letter seeking comments on the proposed legislation. In that letter the Senators concluded that “many tribal communities are in the midst of a *public safety crisis*.”

After reading and re-reading the Tribal Law and Order Act of 2009, I thought to myself, “This is déjà vu all over again.” In 1997 Attorney General Janet Reno and Secretary of the Interior Bruce Babbitt were directed by President Clinton to come up with a plan to improve law enforcement in Indian Country. There were meetings and listening conferences with tribal leaders and many others who were involved with criminal justice systems. The beginning of that report, named Report of the Executive Committee for Indian Country Law Enforcement Improvements of October 31, 1997, starts out with, “There is a *public safety crisis* in Indian Country.” The findings in 1997 and the findings in S. 797 are nearly identical. The only change is that the crisis has worsened, if that is possible, as a result of the surge of methamphetamine use on reservations. There was a public safety crisis before 1997, there was a public safety crisis in 1997, and there is a public safety crisis today.

In the BIA we all knew what needed to be done but funding was so inadequate the aforementioned public safety crisis continued to grow right before our eyes. In a nutshell, there were not enough cops, and jails were antiquated and over-crowded. If it were not for the many tribes that utilize their own funding resources for criminal justice systems, the problems would certainly be worse than what they are. I must note that the BIA was created for the purpose of

effecting treaties and obligations stemming from the unique trust responsibility established by the United States Constitution and centuries old United States Supreme Court cases.

And now for specifics. S.797 proposes sincere, greatly needed changes in Indian Country law enforcement. I offer you my views, based upon my professional and personal experience.

Police

There must be accountable policing.

In 2001 the Hualapai Tribe asked that I start a tribal police department for the tribe. The BIA had the same problem then as it does today—it could not attract and hire police officers. There was always a shortage of officers and criminal activity was increasing. The tribe thought it could do better so it contracted with the BIA to operate the police department. The BIA funding was limited but the tribe was desperate for adequate law enforcement protection. Today the tribe supplements the federal government funding and provides for 50% of the police department operating costs. Law enforcement is expensive. Hualapai law enforcement officers are required to meet professional standards for hiring and training. Officers undergo an intense background check including a polygraph examination.

The tribe understood that attracting and retaining officers would not be cheap. The tribe pays its officers a little more than the surrounding counties and communities. Hualapai police participate in the State of Arizona Public Safety Retirement System, the same as city, county and state law enforcement officers. Arizona is the only state that I know of that passed legislation authorizing tribal police and firefighters to participate in the state public safety retirement program. This allows officers from other departments to transfer to the Hualapai Tribal Police Department without losing their retirement. Hualapai tribal police officers are required to complete the State of Arizona Peace Officers Standards and Training (AZPOST) background checks and training requirements. When officers graduate from AZPOST basic training they are authorized to enforce state laws. I advocate state training in that it gives tribal officers the opportunity to train side-by-side with state, county and local law enforcement officers. Sheriffs and chiefs of police realize that tribal police are required to meet the same standards as their officers. Hualapai tribal police are also required to complete the BIA certification course and all hold BIA Special Law Enforcement Commissions. The problem is that the BIA does not regularly offer the required course and takes up to a year to get officers BIA trained and certified. All Hualapai law enforcement officers must also complete annual in-service training of no less than 40 hours.

Criminals have no respect for reservation boundaries. The Hualapai Tribe has established Interagency Governmental Agreements with the State of Arizona Department of Public Safety, Mohave County and Yavapai County for mutual aid and assistance. The IGAs did not happen overnight. It took open communication and some give and take with state and county officials but in the end everyone involved agree that there is a need to coordinate and work together in the

interest of public safety for all. The fact that tribal police were state trained and certified may very well have been the deciding factor.

The Hualapai police department is located in a renovated residence which is wholly inadequate not to mention unsafe. Like many other reservations of comparable size and enrollment a criminal justice center is necessary to house the courts, police and detention programs.

Las Vegas Paiute tribal police officers are Nevada POST certified and hold BIA Special Law Enforcement Commissions. The Las Vegas Paiute Tribe has an Intergovernmental Agreement with Las Vegas Metropolitan Police Department and Clark County. The location of the tribe's headquarters in downtown Las Vegas created numerous situations involving fresh pursuit onto tribal lands. Like the Hualapai Tribe, the Las Vegas tribe supplements the federal government funding. The tribe contributes 90% percent of the police and dispatch operating costs. The tribe contributes 100% of contract detention costs with the City of North Las Vegas. There is no BIA jail in southern Nevada.

Courts

There must be a competent court system.

The Hualapai Tribe operates its tribal court through a contract with the BIA. The tribe supplements the BIA court contract with its own funds. The tribe's portion covers 62 % of the operating costs. The judges and prosecutors are not required to be licensed attorneys. The law and order code is five years old and needs some updates and revisions. The court is located in a renovated building that is 35years old and shares the building with the tribe's mental health program. The BIA jail is 100 yards from the courtroom so prisoners are marched to attend court.

Adult Detention

There must be adequate detention.

The adult jail in Peach Springs is operated by the BIA. The BIA has chronically been unable to fill its correctional officer positions primarily because of the lack of housing in the community and the lengthy recruitment period that often exceeds 12 months. The fact that BIA only posts its vacancies on www.usajobs.gov prevents many people on reservations from accessing the vacancy information. The low pay in comparison with surrounding county jails is another obstacle. As of two weeks ago, the BIA had four correctional staff to staff a 45-bed facility which is always filled to capacity. Tribal police have 197 arrest warrants that are not processed because there is simply no place to book or house prisoners. Because of staff shortages and unsecure outdoor recreation yards, prisoners are not allowed to go outdoors to exercise or to even see sunlight. They are confined to cells or dayrooms 24 hours per day. One prisoner from the Pascua Yaqui Tribe is serving a sentence to 2014.

In September 2005 through February 2007, the BIA closed the jail on a one-day notice. It created a monumental disaster. If there was jail space available tribal police could house a prisoner in Flagstaff, Arizona, 115 miles away. If no space was available tribal police were forced to take prisoners to Gallup, New Mexico, 300 miles away. The BIA had contracts with these county jails.

Because it created so many problems for tribal police and the community in general we truly believed this cannot happen again. However, earlier this month BIA detention officials notified the tribe it was closing the jail again because it could not hire staff.

Last week the Hualapai Tribe sent a letter to the Assistant Secretary – Indian Affairs asking for meaningful consultation between the BIA and tribe hopefully to work out a practical solution.

S.797 increases sentencing from one year to three years. Unless there are detention facilities available increased time makes little sense.

Juvenile Detention and Rehabilitation Center

There must be a comprehensive juvenile delinquency program.

The Juvenile Detention and Rehabilitation Center, located on the Hualapai Reservation is proving to be a great success after 10 years of planning and efforts to secure funding for construction and operations. The Center was opened on May 15, 2009 and now provides a safe, secure detention and rehabilitation option on the reservation. Prior to this time, youth were transported hundreds of miles to contract facilities in nearby states.

The Department of Justice, Bureau of Justice Assistance, provided \$4.65 million for the design and construction of this facility. \$3.5million was initially awarded and another \$1.15 million was provided to complete the project as it now stands. Importantly, the Hualapai Tribal Council provided an additional amount of nearly \$1million of cash in addition to all of their in-kind contributions of land, staffing and support services. In addition, BJA provided technical assistance for over five years through the Native American and Alaskan Technical Assistance Project.

The BIA entered into a P.L. 93-638 contract with the Tribe in July 2008 which enabled the Tribe to manage and operate this program. In addition to annual operating funds which amount to nearly \$1.9 million in FY 2009, funds were also provided for start-up expenditures to furnish offices and housing units. Although there is currently funding for partial operations, the BIA has yet to make requests of Congress for complete funding for the actual operating expenditures. When the facility is fully staffed and operational, the costs are calculated to be \$2.5 million per year, some \$600,000 short of the current funding level. In addition, the BIA will not pay for any treatment and/or educational programming in the juvenile center. As we all recognize, it is not

practical to house youth for lengthy periods of time without affording them access to education and treatment programs to address the issues that resulted in their delinquent behavior.

All components in criminal justice systems must work effectively and cohesively. At Hualapai we have a good tribal police department, a tribal juvenile detention and rehabilitation facility that promises to be a success and a competent court system; however, the downfall is adult detention services. The tribe is interested in contracting with the BIA for the operation of the adult jail program but it is extremely underfunded. The tribe is not about to take over another ill funded federal program and be forced to use its scarce funding resources for adequate operation and service.

Tribal governments have equal responsibility to ensure public safety in Indian Country. I have said repeatedly that if tribes expect Washington DC to fix all the social ills on reservations they will be waiting forever. Tribal governments must ensure that all local service providers, including those in the criminal justice system, collaborate to ensure maximum effective services. Too many times the police are blamed. Police cannot arrest the way out of community problems. Finger pointing and placing blame is a waste of time. Washington can provide the tools but it's the tribes that must do the work.

I have some specific remarks about S.797 as follows:

- ✓ Federal Accountability and Coordination—I have a problem with creating an office in the BIA where one person is in charge of police and courts. This goes back to pre-1975 when the BIA had such an office called Judicial, Prevention and Enforcement Services. It did not work effectively, especially when a person with strictly a “police” mentality is placed in charge. Courts and juvenile services always came in second. Even the BIA then decided it was better to separate enforcement and detention from the courts. Ideally they should be separate and distinct offices at equal levels. Many tribes have amended their constitutions to separate the two arms of government.
- ✓ DOJ COPS grants are a giant welcome back especially for overtime, equipment and training. The main issue with the hiring grants is that many times tribal governments do not have a steady income base to ensure they can pick up these costs when the hiring grant funds expire. Instead additional funds should be made available to the BIA on a permanent basis.
- ✓ NCIC access for tribal police is a standard practice at some tribal police agencies. The Las Vegas Paiute police dispatch center has access to NCIC information. It is an important and life-saving tool for law enforcement. The tribe was required to meet certain security standards and the Nevada Department of Public Safety conducts periodic training, inspections and audits. This requirement cannot be disregarded because it ensures professionalism, security and trust.
- ✓ I have an issue with housing tribal misdemeanor convicts in Bureau of Prisons detention facilities. From my experience, BOP houses felons. Moreover, the nearest BOP facility

from Peach Springs in over 225 miles away. In any case, tribal court offenders must be incarcerated somewhere whether it is in a county, city, federal or tribal jail. Of equal importance is for tribes to have the ability to house these offenders in close proximity to their families and potential employment options upon release.

- ✓ Year after year tribes request additional funds from the BIA. They are told there is no money available yet it is widely known that BIA law enforcement continues to carry over unspent funds at the end of the fiscal year. There is simply no transparency or accounting on how BIA law enforcement spends appropriations. Legislation requiring annual accounting reports from the BIA may resolve this problem.
- ✓ A funding formula for the distribution of funds is fine except that the pot of money must be sufficient in the first place. Back when law enforcement was a part of the Tribal Priority Allocation process many tribes prioritized law enforcement funding. Other tribes did not. It is unfair to take money from the tribes who prioritized law enforcement to offset those that did not.
- ✓ A uniform database for crime data collection and information sharing is absolutely necessary; however, in the past some tribes objected to publicizing their crime information saying it had negative impact especially when they were dealing with economic development.
- ✓ If it takes legislation to get all US Attorneys to appoint Assistant US Attorney liaisons this may assist in promoting continuity of prosecutions in Indian Country. Federal prosecutors serve an important function in building trust by serving tribal communities, much like a local district attorney. We all recognize that violent crimes cannot be addressed except by them.
- ✓ The Indian Law and Order Commission should be a low priority. It seems to me that if the Administration and Congress agree there is a crisis in Indian Country there is no need to study it some more.
- ✓ Do all federal law enforcement agencies have foundations to subsidize their operations or are they sufficiently funded with federal funds? Or will Indian Country Law Enforcement be alone in taking gifts and donations to fund their law enforcement programs? There cannot be a double standard.
- ✓ The Office of Indian Country Crime is necessary for ensuring uniformity with prosecuting federal crimes. Currently it varies from district to district. Many times there will be prosecution in one case then declination of a similar case--sometimes from the same reservation. Some districts have thresholds on the dollar amounts stolen or amount of drugs involved. For felony crimes by or against Indian people, the United States has exclusive jurisdiction.
- ✓ Reauthorizing past legislation is fine but I have learned that sometimes there is a huge disconnect between authorization and appropriation. Unfunded authorization means failure for promising ideas.

- ✓ If the federal government is going to build jails, it must ensure adequate funding for safe and effective operations. There must be a well coordinated effort between DOJ and DOI. Too many jails are left empty or in partial use because of insufficient funding.
- ✓ There is a lot of responsibility in the Tribal Law and Order Act of 2009 that falls on the BIA. I can honestly say the Act requirements are doomed for failure if additional resources are not made available to the BIA to carry out its responsibilities under the Act.

I have had the opportunity to work with Indian Tribes all over the Country. I have met with numerous tribal leaders and tribal chiefs of police throughout the years. I have read accounts of criminal justice on Indian lands going back to the 1930's. I have attended numerous meetings and conferences regarding public safety in Indian Country. I have provided testimony to the Congress about the dire needs in Indian Country. I have met with Federal and state officials in an effort to better law enforcement in Indian Country. My point is that it all comes down to lack of, or shortages of resources. Section 2 in the Tribal Law and Order Act of 2009 lists a number of findings that we have all heard over and over. Commitment is the next finding that we need.

Honorable Members of this Committee, again thank you and your staff for the outstanding work in introducing S. 797. We all agree there is a public safety crisis that affects the lives of our citizens living and working on Indian reservations. Let us get the legislation passed and signed into law because there is a lot of work to do to make all of Indian Country safe and secure. Let's not let the next generation of tribal criminal justice practitioners read about another fruitless effort. During the last century, scholar and solicitor Felix Cohen observed that Indian people have been the canary in the coal mine for Congressional ideas. I commend you for striving to enact effective, comprehensive legislation which finally addresses this public safety crisis in Indian Country.