

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

HEARINGS
BEFORE THE
SUBCOMMITTEE ON CRIME
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS
SECOND SESSION
ON
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

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I also recall she is one of our "Women of the Year", so it is a great honor to serve with her, and I am pleased to welcome you this morning.

Mr. CONYERS. We appreciate your prepared statement. We know you have also introduced a piece of legislation, H.R. 12364, and both of those will be incorporated in the record, and we welcome your additional comments.

TESTIMONY OF HON. BARBARA JORDAN, REPRESENTATIVE FROM THE STATE OF TEXAS

Ms. JORDAN. Thank you, Mr. Chairman, and thank you, Mr. McClory, for welcoming me to this committee, and for the words which you said, which are all kind.

Mr. Chairman, and Mr. McClory, I have introduced a piece of legislation that attempts to strengthen the civil rights provisions of the Law Enforcement Assistance Administration. I would hope that this subcommittee, in proposing legislation for the continued authorization of LEAA, would put my bill in your authorizing legislation.

Mr. Chairman, it is necessary that we do something about civil rights enforcement in the Law Enforcement Assistance Administration. I am sure it is not the only agency, but it is certainly one agency with the word "Enforcement" in its title, which has declined to enforce the law.

In 1973 I proposed amendments when the LEAA authorization was in Subcommittee 5. I proposed civil rights amendments which were designed to strengthen civil rights enforcement at that time. What we wanted to do was to give the Law Enforcement Assistance Administration the early option to cut off funds if a jurisdiction was found to be discriminating. We passed the 1973 authorization law, including the civil rights amendments. The LEAA did not even promulgate regulations to carry out, to effectuate, the 1973 amendments until December of last year—I am talking about December of 1975—when they didn't promulgate regulations, they "proposed to promulgate".

We have had the 1973 amendments longer than 2 years. They have not been enforced. Regulations have not been promulgated. In December the Administration proposed to promulgate regulations and has not done so.

LEAA has not, on its own, terminated funds for any recipient who was found to be the perpetrator of discrimination. LEAA does not like to terminate funds at all because they say it is quite essential that the people in these communities continue to receive the benefits of whatever program it is. And so, consequently, the benefits keep flowing. LEAA keeps paying. And discrimination persists on the part of the recipients.

The bill which I have introduced is very simple. You probably have a diagram in front of you that will show the flow of enforcement of my bill. It is a little scheme called, "Schematic of Proposed Civil Rights Procedures".

Now, step one: If one of three things occurs—and if you are following me in my prepared statement, I'm on page 3—if one of three things occurs LEAA must send to the Governor a notification of presumed discrimination.

What three things will trigger notification of the Governor? A finding of noncompliance by a Federal or State court, or administrative

agency; the filing of a lawsuit by the U.S. Attorney General; or a finding of discrimination by LEAA's own investigators.

If one of these three things occur, what does LEAA have to do? Notify the Governor that there is presumed discrimination.

Step 2: The Governor is given 60 days to seek voluntary compliance. If, after 60 days, voluntary compliance is not achieved, or an administrative hearing has not absolved the recipient, payment of further LEAA funds would be temporarily sustained.

All right, we've got our triggered notification where there is presumed discrimination, and the Governor has 60 days within which time he can try to seek voluntary compliance. And if in that 60 days voluntary compliance is not achieved, a temporary suspension occurs.

Step 3: After suspension the recipient has 120 days in which to request an administrative hearing. LEAA must grant the request for a hearing within 30 days of receiving the request. Payment of further LEAA funds may be terminated permanently if, after the hearing, the recipient is found to be in noncompliance. If the recipient fails to request a hearing, LEAA must make a finding based upon the record that it has before it. Payment may resume only if the recipient is found to be in compliance.

There is nothing very new or dramatic about the procedure that I have outlined here because HEW has a similar procedure. It is anticipated that revenue sharing will have a similar procedure for civil rights compliance.

Note, at any time during the process the recipient has access to the courts. Aggrieved citizens may file suit in Federal court against alleged discriminators, and they may be awarded attorneys' fees if their suit is successful. Attorneys' fees to the prevailing plaintiff—nothing new about that.

The Attorney General is given explicit authority to file suit in Federal court, independent of any action or recommendation by LEAA. Reasonable and specific time limits must be established by LEAA for dealing with complaints and for conducting independent reviews.

If LEAA does nothing at all, at least the provisions of this bill which I have introduced would provide for some remedy on the part of the recipient; some remedy on the part of that person who is discriminated against. That's what we've got to do, or the law just means absolutely nothing, as we approved it as a result of the 1973 amendments; and the whole policy of, "No Federal money shall be distributed to people, agents, which discriminate."

So, Mr. Chairman, I recommend the bill to you for your consideration as you discuss civil rights provisions and continued authorization of LEAA.

Mr. CONYERS. Thank you very much.

I think your proposal makes eminently good sense.

The consideration that arises with me is, what if the organization itself is in noncompliance, which is precisely the problem we have here. Your legislation, of 3 years ago is still in the process of being promulgated—it makes me want to find out how far along LEAA is.

We all enacted a law; everyone understood what it meant; it went on the books; the President signed it; and then it was ignored.

Now, some of us—yourself included—are getting a little tired of this. We can pass civil rights laws year in and year out, and the agency charged with the enforcement ends up being the prime noncompliant.

Now, how do you get tough in Texas legislative proceedings?

Ms. JORDAN. Well, Mr. Chairman, I wish that I could apply the law of the frontier——

[Laughter.]

Ms. JORDAN [continuing]. And go over there and mandate enforcement.

Now, since we can't do that, I have suggested that if LEAA doesn't do that, we at least have two other places on that scheme for people to try to act, to file suit; the Attorney General can file suit, that's one thing that can happen. Then we can get an administrative agency or a court to find discrimination as the basis of the filing of the complaint by the person against whom the discrimination occurred.

We've got three ways to go, rather than one. It would be very frustrating for the whole process of civil rights enforcement if we were going to be forever stymied in the enforcement of this law.

Mr. CONYERS. Well, I think you do point out correctly that there are multiple alternatives involved in your approach.

Would you be willing, and my colleague from Illinois, to perhaps examine an additional provision to your legislation that would interrupt the operation of LEAA if they are not in compliance, if it reaches such a point?

Ms. JORDAN. Mr. Chairman, you are not addressing that question to me, I assume.

Mr. CONYERS. I am, as my fellow colleague on the judiciary.

Ms. JORDAN. Mr. Chairman, if we say interrupt all the money that is being dispensed by the LEAA, and that money is going to recipients, groups, agencies, organizations which do not in fact discriminate——

Mr. CONYERS. True.

Ms. JORDAN [continuing]. And we simply say we are going to end the authority of LEAA to dispense funds altogether, we would be penalizing those groups who now receive money, which are in compliance.

Mr. CONYERS. Well, how about a temporary interruption?

Ms. JORDAN. We could temporarily interrupt, Mr. Chairman, but I would hope there would be some alternative dispenser of funds to those groups which are entitled to continue to receive the funds. To temporarily disrupt or halt, I'm just worried about those people out there who are doing the right thing.

Mr. CONYERS. I share your concern.

How about interrupt the operation of the LEAA itself, without interrupting those grantees who are in compliance?

Ms. JORDAN. If a way could be found to do that, Mr. Chairman, I would certainly be in total agreement with that.

Mr. CONYERS. Well, that may be a challenge to the continued noncompliance of the LEAA.

Now, perhaps the alternatives that are raised in your proposal should be given some experience to determine whether these alternatives will put the pressure that is needed into action.

But finally, if in the end this is a consistent pattern that after 8 years and all kinds of legislative attempts to fail to get any kind of effective cooperation, then I would like for us to explore some legislative provisions that would go to the heart of the matter, inside the LEAA operation, and not punishing those recipients of funds who are in compliance.

Mr. McClory?

Mr. McCLODY. Thank you, Mr. Chairman.

Is the proposal that you make, Miss Jordan, is that consistent with another practice with regard to other legislation?

Ms. JORDAN. It is consistent in a general way with the practice applied by HEW in the enforcement of title VI.

Mr. McCLODY. Right.

Ms. JORDAN. Now, as you know, HEW may, under title VI, try to achieve compliance in school integration matters. They, with just the threat of termination of funds, are able to resolve almost 90 percent of the disputes that occur.

So, the answer to your question is: Yes, it is certainly consistent with HEW's enforcement under title VI.

Mr. McCLODY. Since it is already in the law that the funds should be dispensed and utilized without discrimination, the Administrator of LEAA would have authority, I assume, under existing law, to withhold if he found administratively—he hasn't exercised that authority, has he?

Ms. JORDAN. He has the authority, but he has not chosen to exercise it at all.

Mr. McCLODY. We don't have any mechanism.

Ms. JORDAN. That is right, we don't have any time frame.

Mr. McCLODY. What about the city of Chicago—those funds—aren't they withholding \$60 million?

Ms. JORDAN. Those are LEAA funds, the police department. But that was not LEAA action, that was court action.

Mr. McCLODY. Right.

Ms. JORDAN. And if LEAA had acted, it might have been possible to get that situation worked out without going to court, having a decision and enforcement of the judicial decree.

Mr. McCLODY. So, at the present time under administrative authority you can achieve the same thing as through court action.

Ms. JORDAN. It only takes longer.

Mr. McCLODY. Of course, your suggestion involves also the possibility of court action.

Ms. JORDAN. Yes.

Mr. McCLODY. I think that is very good.

Mr. CONYERS. Let me just raise one question while Mr. McClory is preparing for his final question.

Let us go to the larger question of crime in America, and the responsibility of the Federal Government in this area, and the apparent failure of 8 years and \$4.5 billion of LEAA; but the greater failure of the Federal Government to deal with this problem of crime.

Would you have any suggestions, or recommendations at this point, or later, Miss Jordan, with regard to the formulation of policy, or objectives in the way that the governments, Federal and State, could approach this problem?

Ms. JORDAN. Well, Mr. Chairman, that is a problem that is, as you observed, most serious. I would like, Mr. Chairman, to give that some thought, and at another time come with a thoughtful response to your question.

Mr. CONYERS. I appreciate that and here is why I'm saying that. I have asked the Attorney General of the United States, through his

Deputy Attorney General, the same precise question. Until the Government designs some program with some objectives by which we can measure what it is in our strategy toward crime, to make some evaluations, we can have programs—and there are 100,000 grants flowing from LEAA—we can increase them ad infinitum; we can increase the amounts of money. We can create block grants and revenue sharing, but absent some kind of plan—it may be necessary for us in the legislature to devise some kind of a program that approaches this subject. We have now what some people have termed in this subcommittee a “fiscal relief program,” for the law enforcement agencies of America at every level.

And of course no one wants that kind of a law. With the localities as starved for revenues as they are, they don't care if it comes from the Mafia, they want the money, much less whether it comes through the LEAA, the Justice Department, or anybody else.

But somewhere along the line I perceive us as having the responsibility to inquire if there is a program, and if not, perhaps help shape one. I would invite your thoughts on that.

Ms. JORDAN. I would certainly do that, Mr. Chairman.

Mr. CONYERS. Thank you.

Mr. McCLORY. Miss Jordan, aside from the recommendations for amendments that you are making, are you in full support of the extension of the LEAA program?

Ms. JORDAN. Mr. McClory, I'm generally in support, but I have some negative reactions to their civil rights enforcement that make me reluctant to give total approbation to the Agency. But, the answer to your question is, yes.

Mr. McCLORY. Thank you very much.

Mr. CONYERS. Now we'd better let you get out of here, now that you have approved the program. [Laughter.]

You may reconsider it before too long.

Ms. JORDAN. Thank you, Mr. Chairman.

[The prepared statement of Hon. Barbara Jordan follows:]

STATEMENT OF HON. BARBARA JORDAN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TEXAS

Mr. Chairman, members of the subcommittee, I have introduced legislation amending the civil rights section of LEAA's basic authorization. I urge this Subcommittee to incorporate my bill into its 1976 amendments.

The purpose of my bill is straight forward: to assure that LEAA funds will not continue to flow to state and local law enforcement and criminal justice agencies which have been found to have discriminated, unless corrective action is taken.

The reasons for my bill are equally straight forward: First, LEAA has not seen fit to implement civil rights law adopted in 1973. Second, LEAA has never, on its own, suspended payment of funds to any recipient which has been found to have engaged in discriminatory practices.

In 1973, the Congress adopted subsection 518(c) of the Omnibus Crime Control and Safe Streets Act. I authored those 1973 amendments. They provide a broad prohibition against the use of LEAA funds for a discriminatory purpose or effect. The amendments provide ample authority for LEAA to initiate civil rights compliance investigations, make findings, seek voluntary compliance, temporarily suspend payments, hold administrative hearings, order corrective actions, and permanently terminate payments. The response of LEAA to the 1973 civil rights amendments has been less than minimal. LEAA's civil rights regulations now in effect were adopted prior to the enactment of the 1973 amendments. Simply put, LEAA's civil rights regulations contravene the law.

In December, 1975, two years and four months after the enactment of the 1973 amendments, LEAA published in the Federal Register proposed regulations to implement the 1973 amendments. Since December, nothing further has emanated from LEAA.

LEAA has never terminated payment of funds to any recipient because of a civil rights violation. Despite positive findings of discrimination by courts and administrative agencies, LEAA has continued to dole out funds to the discriminators. A process of tortured reasoning and a blatant disregard of the 1973 amendments keeps the money flowing.

LEAA's reasoning can be illustrated by example. A complaint is filed alleging discrimination. At the same time the complainant files suit in either state or Federal court. LEAA reasons that pending the litigation it can do nothing. And it does nothing, except continue to pay the defendant. Later, the litigation over, the defendant has been found by the court to have discriminated. The Court orders remedies. LEAA reasons that the court ordered remedies solve the problem. LEAA continues to do nothing, except pay. Either way LEAA portends non-involvement. Either way a clear reading of the statute is ignored. "No person . . . shall . . . be subjected to discrimination under any program or activity funded in whole or part with funds made available under this Act."

My bill proposes a simple set of steps which must be followed by LEAA if discrimination is found to exist. The Members have before them a diagram which summarizes these steps.

Step one. If one of three things occurs, LEAA must send to the Governor a notification of presumed discrimination. The three things which would trigger the notification are: A finding of non-compliance by a federal or state court or administrative agency, the filing of a law suit by the U.S. Attorney General, or the finding of discrimination by LEAA's own investigators.

Step two. The Governor is given 60 days in which to seek voluntary compliance. If, after 60 days, voluntary compliance is not achieved or an administrative hearing has not absolved the recipient, payment of further LEAA funds would be temporarily suspended.

Step three. After suspension, the recipient has 120 days in which to request an administrative hearing. LEAA must grant the request for a hearing within 30 days of receiving the request. Payment of further LEAA funds may be terminated permanently if, after the hearing, the recipient is found to be in non-compliance. If the recipient fails to request a hearing, LEAA must make a finding based upon the record before it. Payment may resume if the recipient is found to be in compliance.

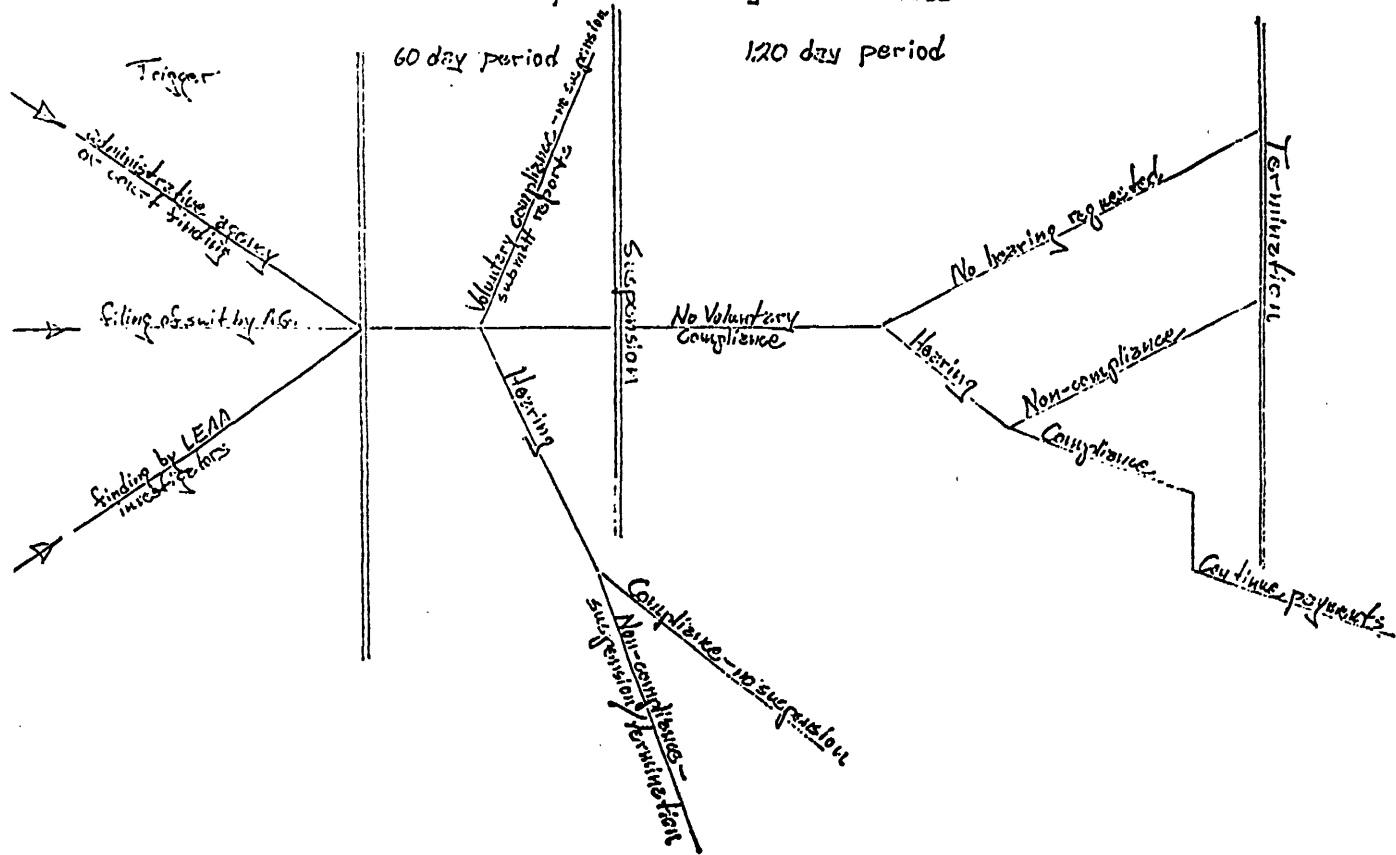
At any time during the process the recipient has access to the courts. Aggrieved citizens may file suit in federal court against alleged discriminators, and they may be awarded attorneys fees if their suit is successful. The Attorney General is given explicit authority to file suit in federal court, independent of any action or recommendation by LEAA. Reasonable and specific time limits must be established by LEAA for dealing with complaints and for conducting independent reviews.

The steps required by my bill are similar to the steps the Department of Health, Education, and Welfare uses to implement Title VI of the Civil Rights Act of 1964. Their inclusion in the LEAA authorization will assure that if LEAA continues to ignore civil rights law, payment of funds to discriminators can be halted by action of the courts, administrative agencies or the Attorney General.

If LEAA continues to do nothing, at least my bill provides that federal money will not be spent in contravention of the civil rights prohibition. If LEAA wishes to implement the 1973 amendments, that will be fine also. Either way, my bill makes certain that the 1973 prohibition against the use of LEAA funds for a discriminatory purpose or effect will be meaningful.

LEAA has both a constitutional and a statutory responsibility to enforce civil rights law. Failure to take that responsibility seriously leads me to believe that further promises should not be taken seriously by the Congress. I am no longer willing to wait to see promises fulfilled. The law should be enforced. That is what my bill assures. To ask that an agency called the Law Enforcement Assistance Administration itself enforce the law, is not asking too much.

Schematic of Proposed Civil Rights Procedures



Mr. CONYERS. We are going to go in order, we have another member of the Judiciary Committee before us. And this subcommittee of course is flattered to have the only two women members of the Judiciary Committee testify; it speaks well of myself and my colleague from Illinois.

Ms. JORDAN. It does.

Mr. CONYERS. We now call the gentlewoman from New York, Miss Holtzman to testify.

She has a long record of concern in connection with the Law Enforcement Assistance Administration, and she has a proposal which I think is quite relevant. She serves with distinction on the Full Committee on the Judiciary, and has concerned herself with matters of criminal justice and law enforcement.

We have your statement, it will be incorporated into the record at this point, and I will call the subcommittee to as much order as we can obtain.

We welcome our colleague.

Mr. McCLORY. If the chairman would yield. I want to join in welcoming the distinguished Congresswoman from New York.

TESTIMONY OF HON. ELIZABETH HOLTZMAN, REPRESENTATIVE FROM THE STATE OF NEW YORK

Ms. HOLTZMAN. Thank you very much for your kind remarks. Let me say it is a privilege to appear before your subcommittee, not only to testify about the LEAA, which is an important tool on the fighting of crime, but to acknowledge this subcommittee's very important role with regard to gun control. In my opinion, LEAA and gun control are the most important Federal legislation dealing with the problem of crime in the United States.

Mr. Chairman, it seems to me that one of the top priorities of government at all levels is to protect Americans from the ravages of crime—from the death, and injury, and fear that it brings.

State and local governments have the basic responsibility in our system of government for combating crime, yet the Federal Government has tried to assist them in these efforts. It seems to me that the Federal Government has failed to provide adequate help.

LEAA was to be the major weapon of the Federal war on crime, but testimony that others have given before this subcommittee has shown that the LEAA has not had the kind of significant impact that the dollars spent on it would warrant.

In 1968 the Omnibus Crime Control and Safe Streets Act was passed in order to aid States in improving law enforcement and reducing crime. From 1969 until 1974 the LEAA spent more than \$3.6 billion in that effort. But in the same time period the crime rate increased by 36 percent, and the rate of violent crime increased by 40 percent. You can't say that the increase in crime is directly related to the spending of money on LEAA, but I would argue, Mr. Chairman, that the money spent on LEAA is not nearly as effective against crime as it could have and should have been.

Mr. CONYERS. Would it be inappropriate to submit that reducing the amount of money of LEAA would result in a reduction of crime?