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HEARING  
BEFORE THE  
COMMITTEE ON  
LABOR AND PUBLIC WELFARE  
UNITED STATES SENATE  
NINETY-SECOND CONGRESS

SECOND SESSION

ON

COLSTON A. LEWIS, OF VIRGINIA, TO BE A MEMBER OF THE  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEPTEMBER 20, 1972

Printed for the use of the Committee on Labor and Public Welfare



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(II)

## NOMINATION

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WEDNESDAY, SEPTEMBER 20, 1972

U.S. SENATE,  
COMMITTEE ON LABOR AND PUBLIC WELFARE,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10 a.m., in room 4232, New Senate Office Building, Hon. Harrison A. Williams, Jr., chairman, presiding.

Present: Senators Williams, Pell, Cranston, Javits, Dominick and Schweiker.

Committee staff members present: Stewart E. McClure, staff director; Robert E. Nagle, general counsel; and Eugene Mittilman, minority counsel.

The CHAIRMAN. The Committee on Labor and Public Welfare is meeting this morning to hear testimony on a nomination submitted by the President.

Our nominee is Mr. Colston A. Lewis, of Virginia, to be a member of the Equal Employment Opportunity Commission.

Welcome to the committee, Mr. Lewis.

### STATEMENT OF COLSTON A. LEWIS, OF VIRGINIA, TO BE A MEMBER OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. LEWIS. Thank you very much, Mr. Chairman, for the opportunity to appear.

The CHAIRMAN. Mr. Lewis we have your biography here, and we will have it made a part of the record at this point.

(The biography of Mr. Lewis follows:)

COLSTON A. LEWIS, COMMISSIONER  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Colston A. Lewis, a black Republican lawyer from Richmond, Virginia, has a notable career in the civil rights movement.

Following his discharge from the Army in 1946, Lewis organized the first campaign in Lynchburg, Va., to elect a Negro to the City Council. Although the candidate, C.V. Wilson, was defeated, Lewis' organization, the Voters' League, succeeded in bringing all the registered black voters to the polls. The Voters' League is still in existence, and Lewis later organized a similar effort in Richmond, known as the Crusade for Voters.

Lewis was the first Negro to be appointed Public Defender of Richmond, and has been Chairman of the Electoral Board of that city. Lewis has worked for the N.A.A.C.P. and the Urban League, and was a special aide to Virginia Governor Linwood Holton.

A graduate of Virginia Union University and Howard University Law School (Class of '48), he entered the Virginia State Bar in 1949 and opened his own practice the following year. Lewis specialized in domestic relations, criminal law, and juvenile cases, and is a member of the National Bar Association. He has worked on a number of school desegregation cases in Virginia, including those in Essex, Northumberland, King and Queen, and Westmoreland Counties, and has also represented the P.T.A. Leagues for those counties.

Lewis, 60, was appointed to the Commission by President Nixon in 1970. He was reappointed by the President on July 14, 1972, subject to confirmation by the Senate for a term expiring July 1, 1977.

Lewis is married to the former Glenyce D. Davis of Petersburg, Va. Lewis and his wife, Glenyce, live in Washington, D.C. They have a twelve year old son Colston A. Lewis, Jr.

The CHAIRMAN. We understand Congressman Whitehurst from the Second District of Virginia is here to introduce you, and we are honored to have him here.

Mr. WHITEHURST. Thank you, Mr. Chairman. I appreciate this opportunity.

I had this pleasure a couple of years ago when Mr. Lewis was nominated to succeed the unexpired portion of the term of Mr. Alexander.

There is not too much I could add in addition. I have known Mr. Lewis for some time. He has a splendid record.

Mr. Lewis has been greatly involved with the racial progress we have made in my State. He is very highly thought of by our Governor. I think he has discharged his responsibilities very effectively, in the time he has been on the Commission, and I think his stewardship there recommends him, and I am pleased to appear with him.

The CHAIRMAN. Thank you very much.

Now, do you have a statement, Mr. Lewis, that you would like to make?

Mr. LEWIS. No sir. I have no particular statement to make, except, that I have enjoyed working with the program as part of my life's work, and I feel it is a great opportunity to be here before this committee.

The CHAIRMAN. We certainly appreciate the importance of this position in the fight against discrimination.

The congressional enactment of the Equal Employment Opportunity Act of 1972 certainly increased your responsibilities a great deal.

As you know, we are very familiar with the history of the enactment of that legislation, which followed an extensive filibuster and represented a milestone in the efforts of our society to end job discrimination, based on race, color, religion, sex or national origin.

It is now about 6 months since the President signed this act into law.

In July, Senator Javits and I wrote to the Commission to find out about the backlog of more than 30,000 cases, and also to ascertain what the Commission was doing to implement the statute, as we had passed it.

We have not had a response to either of these questions, that is, the elimination of the backlog, and the implementation of the new statute.

I wonder if you could now personally enlighten us on these two questions.

Mr. LEWIS. Well, Mr. Chairman, I feel that we at the Commission have spent a great deal of time tooling up the machinery to implement the new legislation, for the most part, and I must say that the Commission in some of its vital areas is understaffed.

The turnover has been tremendous since I have been there, and not until recently have we been on a pretty sound basis where we can really operate, and try to reduce the backlog.

I think we are making some progress, but I think that one of the things that we have to consider is the question of our budget not having been passed by the Congress for 1973; therefore, it is difficult to do but so much concrete planning without the necessary wherewithal

to operate, but the last 6 months, for the most part, have been spent reorganizing and setting up the necessary machinery to implement the new legislation.

Of course, we have made some progress, we have filed some suits in some areas, we have issued some good decisions, and I think after we have the reorganization established, and the necessary money to handle it, I think that we will be able to move very rapidly.

In fact, what we have done is to implement decentralization procedures; namely district directors now have some authority to dispose of cases which fall within established guidelines, which will reduce the backlog greatly, because they will not have to go through the process of coming to headquarters and then being returned to the field for subsequent action. And only those cases which might fall outside of the guidelines, or that might raise novel questions, will have to be forwarded to headquarters or consolidated here; so I think that we now have established the machinery which will greatly reduce the backlog.

There are one or two things that I think we could add to it, which will greatly reduce the backlog, but they will require further staff study.

I think we will be moving along pretty nicely, if we get the money.

The CHAIRMAN. Well, there is a vote on now in the Senate. We have to leave for that, but could you remain here, Mr. Lewis, and we will be back very shortly.

Mr. LEWIS. I shall be glad to.

(Whereupon, the committee was in short recess.)

The CHAIRMAN. The committee will come to order.

Mr. Lewis, the law states that no more than three of the Commissioners shall be of any one political party; is that right?

Mr. LEWIS. Yes, sir.

The CHAIRMAN. You were appointed as a Republican?

Mr. LEWIS. Yes.

The CHAIRMAN. So you are a Republican Commissioner?

Mr. LEWIS. Yes, sir.

The CHAIRMAN. This certainly is an area where partisanship has no place, am I right?

Mr. LEWIS. Yes, sir.

The CHAIRMAN. I would like to ask why you went to the Republican convention?

Mr. LEWIS. Why I went?

The CHAIRMAN. Yes.

Mr. LEWIS. I was elected by my constituents.

The CHAIRMAN. As a delegate?

Mr. LEWIS. Yes, sir.

The CHAIRMAN. Someone suggested here that I had better inquire about that, because we were wondering whether that particular political office was appropriate for a person sitting above partisanship on the Equal Employment Opportunity Commission.

Do you think that was the best thing in the world, to go stand for election as a delegate?

Mr. LEWIS. Well, I did not think I was taxed on anything.

As a delegate, to be perfectly frank, that question never rose in my mind.

The CHAIRMAN. Well, it had not risen in my mind until somebody raised it.

Mr. LEWIS. I do not think it means anything, because actually—I did not even consider it important.

The CHAIRMAN. Well, I appreciate your candor.

Mr. LEWIS. I could have just as easily stayed away as having gone, for the good I did, but it really never crossed my mind.

I happened to have seen some pretty influential people down there, as delegates on some other things, so I thought that as small as I am, I did not think it made too much difference.

The CHAIRMAN. Well, I appreciate your comments.

Mr. LEWIS. In our Commission, we do not bother too much about party politics.

We have some of the best operators from the other party. We go on performance for the most part, and we recognize the rights of everybody, so we are not squeamish about a party.

If a person qualifies for a position, that is how we operate.

Some of the key people that have come on, they are not party affiliates.

The CHAIRMAN. Well, you know, sometimes this is considered to be of a judicial nature, this position, quasi-judicial, and yet there is no hard line.

We know judges stand for office out of the political parties in some of the States.

Mr. LEWIS. If you will notice, one of my good friends, one is a card-carrying Democrat. I gave him the highest recommendation for a judgeship appointment. He worked very hard for Senator Humphrey, and he will be sworn in as a judge on Friday. At our Commission, we do not draw any hard line on party affiliation. An individual is judged on performance.

The CHAIRMAN. For a time that you have served on the Commission, you were incapacitated due to an automobile accident?

Mr. LEWIS. Yes, sir.

The CHAIRMAN. How are you doing now?

Mr. LEWIS. I am doing very well. I am on a cane, I have a slight limp.

I was in the hospital for almost 7 months.

The CHAIRMAN. You look very well. You must be doing well.

Mr. LEWIS. At one time, the doctor said my physical condition was serious, because my thigh muscles, which are well developed as a result of being an athlete, kept my thigh bones from coming together; so the doctors had to operate after I came out of a full body cast after 3 months, and then they still did not heal properly, because of the bone graft from my hip. But I am doing very well now.

The CHAIRMAN. Senator Javits, do you have any questions?

Senator JAVITS. Mr. Lewis, I thank you very much for standing by for me.

We have been busy with health bills on the floor.

Mr. Lewis, I wanted to use this occasion of your being here for confirmation to deal with a major problem respecting the Commission, and through you I would like to transmit a serious message to the Commission.

I do not understand the pace at which the Commission is operating.

Mr. Brown, the Chairman, received a letter from me dated July 25, 1972—that is now almost 2 months ago—to which I have not yet had a

reply, and I ask unanimous consent that letter be inserted in the record.

The CHAIRMAN. Without objection, so ordered.

(The letter dated July 25, 1972, follows:)

HARRISON A. WILLIAMS, JR., N.J., CHAIRMAN  
 JENNINGS RANDOLPH, W. VA.  
 CLAIBORNE PELL, R.I.  
 EDWARD M. KENNEDY, MASS.  
 GAYLORD NELSON, WIS.  
 WALTER F. MONDALE, MINN.  
 THOMAS F. EAGLETON, MO.  
 ALAN CRANSTON, CALIF.  
 HAROLD E. HUGHES, IOWA  
 ADLAI E. STEVENSON III, ILL.

JACOB K. JAVITS, N.Y.  
 PETER H. DOMINICK, COLO.  
 RICHARD S. SCHWEIKER, PA.  
 BOB PACKWOOD, OREG.  
 ROBERT TAFT, JR., OHIO  
 J. GLENN BEALL, JR., MD.  
 ROBERT T. STAFFORD, VT.

## United States Senate

COMMITTEE ON  
 LABOR AND PUBLIC WELFARE  
 WASHINGTON, D.C. 20510

July 25, 1972

The Honorable William H. Brown, III  
 Chairman  
 Equal Employment Opportunity Commission  
 1800 "G" Street, N. W.  
 Washington, D. C. 20506

Dear Mr. Chairman:

The Congressional enactment of the Equal Employment Opportunity Act of 1972 marked a milestone in the efforts of our society to end job discrimination based on race, color, religion, sex or national origin.

The opportunity given the Commission through this enforcement statute represents an unparalleled chance to provide redress in the form of decent employment opportunities for millions of minorities and women. It is truly the chance to make a reality of the dream that was first fashioned with the passage of the Civil Rights Act of 1964.

It has now been four months since the President signed this Act into law and we have been somewhat distressed by the failure of the Commission to take charge of its new responsibilities with the full vigor and resources at its command. In the four months since the bill was signed, less than ten cases have actually been brought before the courts. In view of the backlog of more than 30,000 cases which was described to the Congress last year, a more vigorous approach is certainly warranted and necessary.

During the confirmation hearings on William Carey to be General Counsel to the Commission, this matter was raised and it was suggested that the Committee would be asking you for some additional details on the implementation of the Equal Employment Opportunity Act of 1972 (P.L. 92-261).

It would be helpful if you would provide the Committee at your earliest convenience with the following information:

1. The details and the supporting documents reflecting the current case-load and the best estimate of the number of individual complainants and respond-

The Honorable William H. Brown, III  
 July 25, 1972  
 Page 2

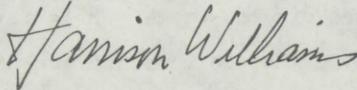
ents who are involved in charges. Please separate the number of charges into those filed before the effective date of P.L. 92-261, and those subsequent to it.

2. A comprehensive statement of the extent to which you contemplate reorganizing the Commission in order to achieve its new functions, together with your analysis of the budget allocations relating to such reorganization. In this regard we would appreciate knowing the expected date by which the Commission will be functioning under this new organization.
3. A statement regarding the projected litigation for the Commission and how you plan to clear up the backlog of 30,000 cases for which you requested court enforcement.

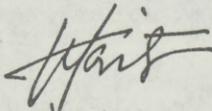
We would hope that in making available to the Committee the requested information you will bear in mind that each of us on the Committee fully supports the principles of equal employment opportunity as demonstrated by our efforts to secure enactment of P.L. 92-261. However, we are pledged to a continuing review of the Commission's operations until such time as the Congress is satisfied the Commission has undertaken the mandate of the overwhelming vote last March.

If you have any questions regarding the above requests, please do not hesitate to communicate with the Subcommittee staff at 225-3674.

Sincerely,



Harrison A. Williams, Jr.  
 Chairman



Jacob K. Javits  
 Ranking Minority Member

HAW:debb

Senator JAVITS. In that letter, I asked how the Commission was implementing its new powers. At that time I understood that less than 10 cases had been brought before the courts.

As a matter of fact, only nine cases have been filed to date, and yet there was described to us the backlog of 30,000 cases last year, and the main reason for passing the law to start suits instead of getting cease-and-desist orders was because Mr. Brown himself since 1969 has been testifying that if we want action fast, we have got to give him the right to sue.

The cease-and-desist order practice slows him up too much, he told us. We gave him the right to sue. It is now not 4 months, but 6 months, and there is still no action.

Now, if this situation really is to mature into what it was the intention to make the Commission do, I am sure as a man of conscience you would want the Commission to do something so that we do have more action.

If he does not have the people, he should say so. If there is any other impediment to his work, he should say so.

I would like to point out to you these things have a capacity for dying very fast, and we are seeing that with the erosion in the whole civil rights struggle in the country, in education, and in other areas, and I am deeply worried.

As one Senator deeply interested, and as a member of this committee, I think there is reason for enormous concern. There is nothing that will get an agency running downhill faster than no action, and I am really amazed that we have not had a reply to this letter, which is a strong letter signed by the chairman of the committee and myself, and I would think that the head of any Federal agency would hop to it, but yet we have not had a word.

Anything that you can tell us about that, or any comment, will be very welcome.

Mr. LEWIS. Well, Senator Javits, I have partially addressed myself to the question asked me by Chairman Williams, but I must say the same thing that I had previously said: We are reorganizing and preparing for the implementation of the new legislation, and that I have no knowledge of the letter from you, Senator Javits.

Senator JAVITS. It is from the chairman—

Mr. LEWIS. Or I would have answered your letter, as I do all of my mail, immediately, forthwith, but I had no knowledge of the letter, but I must say that we have been in the process of reorganizing, and what we are asking for is to implement this, the new legislation.

We have filed about nine cases, and they are now in various stages of litigation.

After the smoke had cleared on the new legislation—let me say, I also have prepared a memorandum stating that our Commission is understaffed. We do not have the personnel commensurate to do what we are charged with accomplishing, and the turnover has been great.

We have a turnover of personnel, and we have some internal kinks we just have to iron out, Senator, and it bothers me just as much as it does you.

Senator JAVITS. I wish I could be satisfied with your answer. In the first place, the letter was not addressed to you, so you have no responsibility for not complying, except as a member of the Commission.

It was addressed to the Honorable William H. Brown, Chairman, and we have not heard from him. Secondly, whatever may be the kinks, as long ago as 1969, when I was on the other side of Mr. Brown, I was amazed that Mr. Brown came out for having the Commission with the power to sue, instead of the power to cease and desist, and he was arguing for it.

In answer to the questions he told me and Senator Prouty, the late Senator Prouty—we were very interested in this matter—and he also cross-examined him, he had lawyers on hand ready to act within a week if we gave him power to start suing as compared with cease-and-desist power, and he said there would not be any delay, because he said in his testimony:

“As a practical matter, there will be no first phase, because we presently have in the Commission attorneys and general counsel staff which could start filing suits immediately. We of course would be recruiting lawyers in addition to those lawyers we have.”

Now, I would certainly urge the Commission to tell us its troubles, if it cannot institute suits which need to and deserve to be instituted.

We are not asking you to start suits that should not be started.

If you came and testified that out of all of the 30,000 backlog allegedly, only nine cases should be started, and you could have whatever evidence is needed to back them up, I would be with you.

I would not care if you did not start one case, if there was that much compliance or ability to get compliance, but it seems hardly likely that nine cases is all that there ought to be, considering the backlog. There is something wrong somewhere, and it has taken too long.

Now, we could sit on your nomination, just to say to the Commission, look, there is no use confirming anybody for you, because you are not active.

I do not feel we ought to do that, and I am going to support your confirmation, but I think you owe us an obligation in return to go back there with a new mandate, and really insist that we know what is going on insofar as cases are concerned, and if not, why not, and if there are only nine cases that ought to be started, we are entitled to justification for it.

That is what this letter asks for. If there are more, and you cannot start them, specifically, let us know why in detail, and I hope very much you will as a Commissioner do that, and do what needs to be done.

Mr. LEWIS. Senator, I assure you, I will do whatever I can, and I will do it expeditiously.

Senator JAVITS. Thank you.

If you need any help from me, and I know our chairman joins me—he did join me in the letter, he is a longtime devotee to this question—just call on us.

You will get great support here, but you must tell us what the story is.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Schweiker, do you have any questions?

Senator SCHWEIKER. I have no questions, Mr. Chairman.

The CHAIRMAN. I think the Commissioner, when he returns to the office, probably will carry our feelings about, No. 1, the failure to respond, and No. 2, the difficulty of understanding without an answer to that letter, just what is going on down there. We know there should

be an explanation for the paucity of cases brought in this area when it has been shown that litigation is the only way we can break through to get equal rights established.

Mr. LEWIS. Mr. Chairman, you may rest assured that you will hear from me very, very soon, and I think there are other Commissioners who share the same opinion.

Senator JAVITS. I just wish to ask of Mr. Lewis, to take back with him that I do not want to hear what I said from enemies of the program. I would rather say it.

The CHAIRMAN. That is a good point.

Mr. LEWIS. Yes; I understand that.

The CHAIRMAN. I do not think there is anything further, Mr. Lewis. Senator Pell, do you have any questions?

Senator PELL. I have no questions, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Lewis, for your appearance here.

Mr. LEWIS. Thank you for the opportunity to appear, Mr. Chairman.

The CHAIRMAN. The committee will now proceed to further business. (Whereupon the committee proceeded to further business.)

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