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PUBLIC HEARING
SENATE JUDICIARY COMMITTEE

**On the nomination by the Governor
of the Honorable John O. Bigelow
to be a Member of the Board of
Governors of Rutgers University,
The State University**

Held:
Senate Chamber
Trenton, N. J.
August 2, 1956

MEMBERS OF COMMITTEE PRESENT:

Senator Albert McCay (Chairman)
Senator W. Steelman Mathis
Senator Frank S. Farley
Senator Thomas J. Hillery
Senator Harold W. Hannold
Senator Sido L. Ridolfi
Senator W. Howard Sharp

SENATOR McCAY: This is a public hearing being held and conducted by the Judiciary Committee of the Senate of New Jersey on the nomination by the Governor of the Honorable John O. Bigelow to be a Member of the Board of Governors of Rutgers University, the State University.

This is a public hearing at the request of Judge Bigelow. It is not to be considered in any respect a precedent on future matters but is in the nature of a public hearing at the request of Judge Bigelow and because of the unusual circumstances surrounding the matter.

At the conclusion of the hearing the matter will be taken under advisement for consideration by the Judiciary Committee.

Judge Bigelow, I would like to ask you three questions.

As a Trustee of Rutgers University would you appoint a teacher who was a member of the Communist party or conspiracy?

JUDGE BIGELOW: No.

SENATOR McCAY: As a Trustee of Rutgers University would you discharge a teacher who was discovered to be a member of the Communist party or conspiracy?

JUDGE BIGELOW: I would.

SENATOR McCAY: As a member of the Board of Governors of Rutgers University would you be bound by the Constitution of New Jersey, by the Constitution of the United States and the Laws of New Jersey?

JUDGE BIGELOW: I would.

SENATOR McCAY: Do other Members of the Committee desire to ask questions?

SENATOR FARLEY: Judge Bigelow, were you treated fairly at the last hearing?

JUDGE BIGELOW: Oh, yes. You were all very courteous to me. I remember you especially speaking very kindly to me.

SENATOR FARLEY: Did you clearly understand the questions of the various Senators at that hearing?

JUDGE BIGELOW: As near as I recall, I did.

SENATOR FARLEY: Do you recall my asking you a question that in the event you were a Member of the Board of Trustees of Rutgers University and a professor or professors were brought up on charges of Communism and the questioning or interrogation led to the question - Are you a member of the Communist party? - and the particular professor invoked the 5th Amendment and refused to answer -- can you tell me what your answer to that was at that hearing?

JUDGE BIGELOW: I don't recall such a question and I don't remember what my answer was.

SENATOR FARLEY: Would it surprise you to know you said you would do nothing?

JUDGE BIGELOW: It would surprise me very much.

SENATOR FARLEY: Then during the course of the hearing, after several questions and interrogation by various Senators, I again called attention to the importance of this and the crux of the particular question concerning confirmation and again repeated the question. Do you recall your answer?

JUDGE BIGELOW: I know there was a question about what I would do in the case of a member of the faculty who

I understood at a hearing before some committee or other
pled the 5th Amendment, such as the unAmerican Activities
Committee.

SENATOR FARLEY: Do you recall your answer?

JUDGE BIGELOW: I said I would be guided by the
decisions of the United States Supreme Court and I would
seek the advice of counsel.

SENATOR FARLEY: Well, in your second answer, for
the purpose of refreshing your memory, you said you would
look into the law of the matter.

JUDGE BIGELOW: I probably did. I would want the
advice of counsel and I would look into it myself also.

SENATOR FARLEY: Judge, do you recall my interroga-
tions concerning the payment of fees in the Lowenstein case?

JUDGE BIGELOW: I do.

SENATOR FARLEY: Who paid you your first fee, Judge?

JUDGE BIGELOW: My client.

SENATOR FARLEY: Mr. Lowenstein?

JUDGE BIGELOW: Right.

SENATOR FARLEY: Who paid you your second fee?

JUDGE BIGELOW: The union of which he is a member.

I may not have the name of it exactly but something like the
National Teachers Union, or some such name.

SENATOR FARLEY: Was that particular union ever
cited by the FBI as being a Communist front?

JUDGE BIGELOW: Not that I know of.

SENATOR FARLEY: To refresh your memory, Judge,
didn't you say that you had ascertained at one time they

were cited but that they had eliminated the Communist members and had, may I say, cleaned their house, comparable to the Electrical Union of the CIO that had the same difficulty and they thereafter cleaned their house. Do you recall that?

JUDGE BIGELOW: I recall a good deal of that but I don't think there was any mention of their being cited by the FBI.

SENATOR FARLEY: Not to correct you, Judge, but the question was propounded. Would you change your opinion if it were on the Attorney General's list of Communist fronts?

JUDGE BIGELOW: In what respect?

SENATOR FARLEY: Would it refresh your memory if the reference was to the Attorney General's list of being a Communist front?

JUDGE BIGELOW: I would say it was definitely not, there was definitely no mention of the Attorney General's list.

SENATOR FARLEY: Who brought this case to you, Judge?

JUDGE BIGELOW: A fellow member of the Bar.

SENATOR FARLEY: Will you give us his name, please?

SENATOR JONES: May I address the Committee? The question raises with me the question of the propriety of revealing the name from the point of view of any business capacity, as a lawyer, he may have with the referral attorney.

SENATOR FARLEY: If he feels so inclined, I will not press the question.

SENATOR JONES: May I have an opportunity to give

that a little thought and on that basis the Judge may desire to reply to that later.

SENATOR FARLEY: We will not press the question, Senator.

Now, Judge, do you realize the importance, the responsibility of a Trustee of a state university? Do you realize the depth of the responsibility?

JUDGE BIGELOW: I think I do, yes.

SENATOR FARLEY: You realize that Rutgers is a State institution, do you not?

JUDGE BIGELOW: Yes.

SENATOR FARLEY: And two years ago or thereabouts there were two professors dismissed on the charge of invoking the 5th Amendment. Do you recall that?

JUDGE BIGELOW: I do.

SENATOR FARLEY: What is your opinion of the procedure of dismissing professors for invoking the 5th Amendment?

JUDGE BIGELOW: If they were employees of the State and if they came within the rule of the Slochower case, their dismissal was unlawful. I don't know whether they came within that rule or not.

SENATOR FARLEY: Judge Bigelow, why did you change your answer concerning your attitude concerning a professor invoking the 5th Amendment? Your answer is entirely different today than last Monday. Can you explain that away to this Committee?

JUDGE BIGELOW: I don't recall any difference at all. I don't recall giving a different answer, no. Can you refresh my memory? What was my answer?

SENATOR FARLEY: Your answer to the first question involving the interrogation of a professor by a committee and when interrogated he refused to answer and invoked the 5th Amendment, you answered at that particular time when I asked what you would do about it, you said "Nothing.". The second time the question was propounded I called to your attention the vital importance - the Senate wanted to know concerning your attitude concerning this particular circumstance and I called to your attention not as an Attorney but as a Member of the Board of Trustees - and your second answer was, "I would look into the law." Now, why the hesitancy on Monday and today a clear deliberation on your part that you would dismiss him if that is your understanding?

JUDGE BIGELOW: That is not my answer.

SENATOR FARLEY: Let's hear your answer.

JUDGE BIGELOW: I said I would dismiss a known Communist and that if a man pleaded the 5th Amendment I would abide by the law and to find out what the law is I would recommend that the advice of counsel be obtained. And that is exactly what I told you on Monday, and I even mentioned the counsel and suggested we call on Waldron Ward.

SENATOR FARLEY: Now you recall the answer to this question. But as an individual, a Trustee, sir, you would not make any immediate disposition concerning his immediate dismissal after he invoked the 5th Amendment. Correct?

JUDGE BIGELOW: Correct.

SENATOR FARLEY: You would refer to the law, you would research the law and be governed by recommendation of counsel. Correct?

JUDGE BIGELOW: Yes. I think I would. Yes. You recall to me - I said I would look into the law, I would attempt to obey the law of the land.

SENATOR FARLEY: Now, Judge, do you know what Communism stands for? Could you explain your interpretation of the so-called Communist party and its principles and objects?

JUDGE BIGELOW: I won't attempt to do that, no.

SENATOR FARLEY: Did you say at that hearing that you didn't know and you didn't think many Americans knew what Communism stood for?

JUDGE BIGELOW: No, I did not.

SENATOR FARLEY: You did not?

JUDGE BIGELOW: I did say at that hearing that I didn't know why any American should become a Communist.

SENATOR FARLEY: Correct. You said that.

JUDGE BIGELOW: I think an American to become a Communist would have to be crazy.

SENATOR FARLEY: Judge, of your own volition, without interrogation, concerning Mr. Lowenstein, did you say this, and I quote your words: "I can see no harm in his teaching provided he did not teach Communistic principles." Do you recall that?

JUDGE BIGELOW: No, I do not.

SENATOR FARLEY: Do you recall anyone asking you how deeply you felt about this Communistic approach of teachers? Do you recall that question?

JUDGE BIGELOW: I think Senator Hannold asked me some such question.

SENATOR FARLEY: And what was your answer, Judge?

JUDGE BIGELOW: I referred to Prokofiev's Peter and the Wolf, remember that?

SENATOR FARLEY: Distinctly.

JUDGE BIGELOW: And then I went on to say I understood that Lowenstein had been^a/highly praised teacher for years in the Newark School System and that there had never been any rumor that he sought to inculcate his students with Communism or with, I think I said, radical ideas; and I also said that I understood that he had expressed a willingness to answer the question whether he had been a Communist during the then current school year.

SENATOR FARLEY: Did you use the words "I don't feel strongly about this teaching."?

JUDGE BIGELOW: I think I did, yes.

SENATOR FARLEY: You did. I yield to Senator Hannold.

SENATOR HANNOLD: Judge, I think at the very beginning you answered some questions from Senator McCay, whether you would vote to dismiss a Communist professor, and you said you would.

JUDGE BIGELOW: Right.

SENATOR HANNOLD: Would you answer this very simple question: Would you as a Trustee of Rutgers vote to dismiss a professor who refused to say whether he is now or ever has been a member of the Communist party?

JUDGE BIGELOW: If this is a 5th Amendment case --

SENATOR HANNOLD: I am not talking about the 5th Amendment. I just want you to answer that question.

SENATOR JONES: Will you repeat the question?

SENATOR HANNOLD: Would you as a Trustee of Rutgers vote to dismiss a professor who refused to say whether he is now or ever has been a member of the Communist party?

JUDGE BIGELOW: It would depend on the circumstances under which he refused to make the statement. If he came within the protections of the statutes of the State of New Jersey or the Constitution of the United States, I couldn't elect to dismiss him for that. I think if there was --

SENATOR HANNOLD: May I ask another question?

JUDGE BIGELOW: I beg your pardon.

SENATOR HANNOLD: If you had a hearing at Rutgers and you as a Member of the Board of Trustees were sitting on that hearing and you asked that question, or some other Member asked the question whether this professor was now or ever had been a member of the Communist party and he simply refused to answer that question, what would you do about it?

JUDGE BIGELOW: It would depend on the circumstances.

SENATOR HANNOLD: It would depend on the circumstances?

JUDGE BIGELOW: Yes. I think if there was reason to suspect that any member of the faculty was a Communist, the normal thing to do would be to make some quiet inquiry and find out whether the suspicion was sound.

SENATOR HANNOLD: Judge, along that same line, as a Member of the Board of Trustees, if a professor refused to tell you whether he was or ever had been a Communist, how

would you go about it in a quiet way to find out whether he was a Communist or not?

JUDGE BIGELOW: I suppose that some report would have come in the first place which led to asking that question and there would be a lead I should think somewhere to follow up.

SENATOR HANNOLD: That is the way you would make your investigation and base your opinion on what to do about this?

JUDGE BIGELOW: I think so, yes.

SENATOR HANNOLD: How about if there wasn't any lead?

JUDGE BIGELOW: I don't know what you would do.

SENATOR HANNOLD: You said you would go about it in a quiet way to make an investigation and I wondered how you would go about it in a quiet way to find out whether he was a Communist or not?

JUDGE BIGELOW: I don't know.

SENATOR HANNOLD: Judge, on Monday did you tell our Committee that you advised your client to invoke the 5th Amendment?

JUDGE BIGELOW: I didn't answer that question, no. I said to you, or whoever asked the question, that I thought it would be improper for me to discuss what advice I gave to my client. I added that the record showed I sat beside my client during the hearing and he buzzed me before declining to answer a question.

SENATOR HANNOLD: Did you tell us that or did you tell the reporters after the hearing?

JUDGE BIGELOW: Maybe I have it mixed up but I thought I told you.

SENATOR HANNOLD: Didn't you tell us when we were still in the hearing when you opened your part of the conversation that you had advised your client to invoke the 5th Amendment?

JUDGE BIGELOW: I don't think I did.

SENATOR HANNOLD: Did you advise him to invoke the 5th Amendment?

JUDGE BIGELOW: I don't think I should answer that question.

SENATOR HANNOLD: All right.

JUDGE BIGELOW: You are all lawyers, most of you. Should I answer a question as to what advice I gave a client?

SENATOR FARLEY: That's entirely up to you, Judge.

SENATOR JONES: Well, is it expected?

SENATOR HANNOLD: Senator Farley asked you some questions about the Teachers Union which paid your second fee, as I recall, for representing Mr. Lowenstein. Are you telling us this afternoon that you did not say it was your understanding that at one time that particular organization was on some blacklist of the United States Government?

JUDGE BIGELOW: My recollection is that I said or answered in the affirmative a question as to whether that wasn't -- that Union was not infiltrated with Communism or supposed to be Communist dominated. I don't think there was any mention of any list or any citation. I did say also that I understood that they had expelled the Communist element

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in the Union, especially, I believe, they expelled the Philadelphia Local, I think it was.

SENATOR HANNOLD: Let's forget the testimony of Monday. What you are now saying is that this Union to the best of your knowledge was at one time dominated, according to your words, if I am not right, correct me, - or at least it had a group of Communists in it but later on they cleaned this group out. Is that what you are saying?

JUDGE BIGELOW: That was the reputation, I believe. I got that idea from questions asked at the hearing of the unAmerican Activities Committee at which Dr. Lowenstein was a witness. He was asked questions on that subject and that, as I remember, was the gist of it.

SENATOR HANNOLD: And you, as I understand the situation, represented Mr. Lowenstein in the hearing before the House Committee; you represented him subsequently before the Commissioner of Education, I think, but not before the School Board of Newark because you were ill.

JUDGE BIGELOW: Correct.

SENATOR HANNOLD: And now you are representing him on the appeal. Is that correct?

JUDGE BIGELOW: That's correct. I had hoped to write the brief this week.

SENATOR HANNOLD: I think that is all, right now.

SENATOR HILLERY: Judge Bigelow, you recall at the hearing the other night I opened the questioning when you came in and you made a preliminary statement about the theme Peter and the Wolf and you said you wanted it under-

stood that you knew the composer of that music was a Communist but it didn't change your opinion about the theme. Wasn't that right?

JUDGE BIGELOW: Right.

SENATOR HILLERY: Then I told you we had information before you came in that Mr. Lowenstein, your client in the case, had invoked the 5th Amendment, but he did say, according to our information that he would answer the question whether or not he was ever a member of the Communist party if they would date the question, if they put a limitation on the question, say from 1953 to 1955.

JUDGE BIGELOW: Right.

SENATOR HILLERY: And since they would not do that he invoked the 5th Amendment.

JUDGE BIGELOW: Right.

SENATOR HILLERY: Then I asked you if it was a fair deduction to assume, since he had set a limitation, that he had been a Communist at some time or other. What was your answer to that question?

JUDGE BIGELOW: I don't remember exactly what I did answer but certainly it would raise that inference in the minds of a great many people.

SENATOR HILLERY: You answered, as I recall, that it was a fair supposition.

JUDGE BIGELOW: That may have been my answer. That, of course, wouldn't be the supposition of the law.

SENATOR HILLERY: Before the Committee, I believe I was the one who asked you if you advised your client to

invoke the 5th Amendment. The question was put here before and it was my understanding that you had been the one who advised him to invoke the 5th Amendment. There seems to be a question about that now. Then I asked if you had represented any other cases where people were accused of subversive activities and you said yes. You mentioned a case where you were asked by - I believe, the President of Princeton University asked you to represent a scientist accused of subversive activities and you cleared him.

JUDGE BIGELOW: Yes. It wasn't the President himself who asked me but he wrote me a nice letter afterward.

SENATOR HILLERY: Then you said you represented a man and wife before the unAmerican Activities Committee in Washington. Is that true?

JUDGE BIGELOW: True. They were never called before a public hearing. They were questioned.

SENATOR HILLERY: And at that point I asked you if you were ever approached by other clients to represent them and you said yes you had been approached by known Communists.

JUDGE BIGELOW: True.

SENATOR HILLERY: But you refused.

JUDGE BIGELOW: Yes.

SENATOR HILLERY: I asked how you differentiated between taking those cases, by refusing to take some cases and accepting some cases of known Communists.

JUDGE BIGELOW: I don't know that there is any rule. I would not mind representing a known Communist. I would think that a known Communist is entitled to the advice of

Counsel and I might conceive it my duty to represent a known Communist. But that situation has not arisen. I never felt it was my duty to represent them.

SENATOR HILLERY: Before the Committee you stated you were asked to represent Mr. Lowenstein by an unknown individual in the legal profession.

JUDGE BIGELOW: Right.

SENATOR HILLERY: I read in the newspaper today and yesterday that you were asked to take that case by the Essex Bar Association. Is that true?

JUDGE BIGELOW: This is a little complicated. I had forgotten all about the Essex Bar incident when I appeared Monday night and didn't mention it.

SENATOR HILLERY: You understand that is being used as a strong argument now in your case?

JUDGE BIGELOW: Yes. I was and still am, I suppose, Chairman of the Committee on Civil Rights of the Essex County Bar Association. My memory has been refreshed on this subject by the Bar Association recently. A week or so before the Walters Committee came to Newark, the Acting President of the Bar Association got in touch with me, as Chairman of the Civil Rights Committee, and said that some people who had been subpoenaed as witnesses could not find counsel and he asked me if I could get up a group to take care of them. I thereupon telephoned half a dozen law firms to see if there would be somebody in this firm and that who would represent one of these men. I do not know whether it was after that that Lowenstein was brought to me or whether he

had been brought to me before that. I would have been willing to accept him as a client at the request of this lawyer even though I had not been Chairman of that Committee of the Bar Association. Am I making myself clear?

SENATOR HILLERY: Yes. Do you believe there are attorneys who would refuse to take the defense of the type case you have taken in Mr. Lowenstein?

JUDGE BIGELOW: Will you repeat the question?

SENATOR HILLERY: I said, Judge, do you believe there are lawyers or attorneys who would refuse to take that type of case which you have taken in defense of Mr. Lowenstein?

JUDGE BIGELOW: Yes, undoubtedly there are lawyers.

SENATOR HILLERY: Were you asked by the Essex County Bar Association to represent the other cases you handled, the Princeton case and the other case?

JUDGE BIGELOW: No, I was not.

SENATOR HILLERY: You know, Judge, that the present Board of Governors of Rutgers University has dismissed several teachers because they invoked the 5th Amendment?

JUDGE BIGELOW: I think that is correct.

SENATOR HILLERY: Do you think they were right or wrong in doing that?

JUDGE BIGELOW: I don't want to pass judgment on them. I said a few moments ago if the cases came within the rule of the Slochower decision of the United States Supreme Court that their discharge was unlawful.

SENATOR HILLERY: I am not an attorney so I am not familiar with that decision.

JUDGE BIGELOW: Well, I couldn't tell offhand. I don't suppose anybody here could.

SENATOR HANNOLD: One other question. I would like to get back and let's see if I can get one point straight. Let me ask this question again. Would you as a Member of the Board of Governors of Rutgers University vote to dismiss a professor at Rutgers who does not invoke the 5th Amendment but refuses to state whether or not he was a Communist?

JUDGE BIGELOW: I don't know. I would meet that if it ever happened. If there was reason to think he was a Communist I would look into it.

SENATOR HANNOLD: And how would you go about looking into that?

JUDGE BIGELOW: I don't know. Maybe get hold of the State Police. I don't know. Maybe the Proctors of the College.

SENATOR HANNOLD: In the meantime the professor would still be teaching at Rutgers. Right?

JUDGE BIGELOW: I don't know. I haven't thought that one through, whether he should be suspended right off or not.

SENATOR HILLERY: I know of an instance, for the record here, where one of our Universities had to hire or employ an FBI man and put him in a class for six months before he detected a Communist teacher, and they finally got him.

JUDGE BIGELOW: You asked me about representing - why I had not represented these other cases. I suppose it is normal -- and if you're not a lawyer -- you would

not like to make a specialty of representing Reds. You would think it your duty once in a while, we will say, to take one but you would not want to get known as taking that kind of case regularly, and I don't either. The cases that I have been giving most time to in the last couple of years - well, I am happy to say, I represented one of the largest banks in the State. Another was giving an opinion to a large bank. I represented a newspaper in Atlantic City recently. I try to spread out in my very small practice.

SENATOR FARLEY: Judge, there is alleged to be a list which has been filed by the Communists, or a file, a list of lawyers, anyone who ever represented them. Do you know whether or not they have you on that list, Judge? I don't mean to be critical. I ask whether you know of such a list.

JUDGE BIGELOW: I never heard of it.

SENATOR FARLEY: Is it true that five different Communists came to you and you refused to represent them - other than the three Communists you did represent - they came to you for representation?

JUDGE BIGELOW: I didn't represent three Communists.

SENATOR FARLEY: You were engaged, I understand, on three different occasions - one, the Lowenstein case; one involving the Professor who had some connection with Princeton University; and the third a man and wife going to Washington involved in subversive activities.

JUDGE BIGELOW: I don't think any of those are any more Communists than you are.

SENATOR FARLEY: You contend they are not Communists?

JUDGE BIGELOW: I don't think it is a matter of contention, it is a matter of fact.

SENATOR FARLEY: So, as far as you know Mr. Lowenstein is not a Communist. Is that correct?

JUDGE BIGELOW: I am not going to say anything about that. I have no information about it except what came to me in confidential talks with him. If you were a lawyer you would understand that it is highly improper to breach any confidence.

SENATOR FARLEY: I am not asking you to breach any confidence between a lawyer and his client. I am asking you as a proposed Trustee, on your general disposition of people who may be Communists within the educational system. I think you are conversant with the fact that it is incumbent upon us as elected public officials to make sure about a professor in the public education system and a university, - to ferret out any possibility of any influence of the Communist party. I think you realize this responsibility, do you not, Judge?

JUDGE BIGELOW: I think your responsibility is not to confirm a man who won't hold the job right and I think it is your duty to confirm a man who you are satisfied will hold the job correctly. I have lived here 73 years and regardless of what I say today you gentlemen ought to know whether or not I can hold that job.

SENATOR FARLEY: Don't you think it is our responsibility to interrogate a proposed Member of the Board

of Trustees as to his views on a Communist who invoked the 5th Amendment? Don't you think that is logical from a Committee with this responsibility?

JUDGE BIGELOW: I don't know whether you consider that to be your duty or not in all cases.

SENATOR FARLEY: Well, Judge, do you have any doubt that Communists are trying to infiltrate this Country and its school system? Do you have any doubt?

JUDGE BIGELOW: I think they are making a pretty poor job if they are trying to.

SENATOR FARLEY: Why do you say that?

JUDGE BIGELOW: I don't believe in the School System of New Jersey -- I was going to say a dozen Communists -- I don't believe there is any considerable number.

SENATOR FARLEY: How do you answer that? How do you know that?

JUDGE BIGELOW: Because I never heard of them and I think I would have heard if they had.

SENATOR FARLEY: About two years ago didn't they have hearings in New York concerning - hearings of teachers who conducted a school approximately 60 miles outside of the city limits with an attendance of 100 a day with the sole purpose of teaching how to indoctrinate youngsters in the American schools? Did you ever hear that?

JUDGE BIGELOW: I never heard that, no.

SENATOR FARLEY: But you did hear about two Communists being dismissed from Rutgers two years ago, did you not?

JUDGE BIGELOW: I did.

SENATOR McCAY: Any further questions?

SENATOR HANNOLD: Judge, I think I heard you say that none of the three clients you represented were any more Communists than Senator Farley. Is that what you said a moment ago?

JUDGE BIGELOW: Wait a moment. I was referring to the man and his wife and the college professor.

SENATOR HANNOLD: You were not referring to Mr. Lowenstein?

JUDGE BIGELOW: I refused to say whether or not I ever heard he was a Communist.

SENATOR HANNOLD: You weren't referring to him when you were making that reference?

JUDGE BIGELOW: I was referring to the other three.

SENATOR HANNOLD: Not Mr. Lowenstein.

JUDGE BIGELOW: No.

SENATOR HANNOLD: Judge, is your reason and answer to Senator Farley's question a moment ago part of your thinking in -- was part of your thinking when you answered a moment ago, and also Monday night my question, that you did not feel too strong about this issue of Communism in the public schools?

JUDGE BIGELOW: I don't think I said that. Didn't I say I didn't feel strongly about Lowenstein teaching and that it was up to you?

SENATOR HANNOLD: It was my recollection that, I brought up the statement as you recall, I asked whether you

felt strongly about this issue or deeply - I remember the words "I don't feel strongly or deeply about it" one of those words. Is that your recollection now?

JUDGE BIGELOW: I accept your statement.

SENATOR HANNOLD: I have no further questions.

SENATOR McCAY: Any other Member of the Committee have a question?

JUDGE BIGELOW: May I add - I think I have said it before here and I said it Monday night - that I feel strongly that Communists should not have a part in our educational system; that I would vote immediately to dismiss a Communist from our school system; and that I would not appoint a Communist. I said that before, I said it Monday, I said it again a couple of times this afternoon.

SENATOR FARLEY: Judge, when you say that, isn't it a logical deduction that a professor who invokes the 5th Amendment - the only purpose of a Communist is to get the protection of the 5th Amendment and the unique thing about the entire picture is, and as a lawyer you know, he is trying to destroy the very Constitution which he is using for his defense.

JUDGE BIGELOW: I think it is very important to support the Constitution of the United States and the laws of New Jersey.

SENATOR FARLEY: There is also the word "treason" in the Constitution.

JUDGE BIGELOW: Right.

SENATOR FARLEY: And with the Communist party making every effort to overthrow the government, is it anything else but treason, Judge? I want your opinion. It is very important.

JUDGE BIGELOW: The Constitution of the United States says that treason consists of aiding and abetting enemies in time of war.

SENATOR FARLEY: In other words, there has got to be a war before you avail yourself with an abiding conviction that a man is a Communist who intends to overthrow the Government?

JUDGE BIGELOW: No. You asked if it was treason and I said it is not according to the Constitution.

SENATOR HILLERY: Does that give him a free hand in time of peace, in your opinion?

JUDGE BIGELOW: A Communist?

SENATOR HILLERY: Yes.

JUDGE BIGELOW: No.

SENATOR FARLEY: Let me get back to my question. You said you felt you would dismiss a Communist. If a Professor charged with being a Communist and brought before you as a Member of the Board of Trustees invoked the 5th Amendment, isn't it a logical deduction that he is a Communist by availing himself of that Amendment?

JUDGE BIGELOW: I think the law reads quite to the contrary.

SENATOR FARLEY: I see.

SENATOR HANNOLD: Let's take the situation in the Lowenstein case. As I recall that the man refused to

answer the question as to whether or not he is a Communist or was and he invoked the 5th Amendment.

JUDGE BIGELOW: Right.

SENATOR HANNOLD: But in some hearing he said, "If you ask me whether I was a Communist during the current school year, I will answer." Isn't that plain that he was a Communist during one time or another?

JUDGE BIGELOW: I think most people would draw that deduction.

SENATOR HANNOLD: Not most people, what would you do?

JUDGE BIGELOW: I am not drawing deductions tonight. As a matter of law no inference of that sort can possibly be drawn but outside the law such inference can be drawn.

SENATOR HANNOLD: And if a particular professor doesn't invoke the 5th Amendment but still refuses to say whether or not he is a Communist, you will wait until the time comes to answer that. Right?

JUDGE BIGELOW: Right.

SENATOR McCAY: In answer to a question relative to the 5th Amendment you referred to the Slochower case.

JUDGE BIGELOW: Right.

SENATOR McCAY: I read to you an excerpt from that case: (Reading)

"At the outset we must condemn the practice of imputing a sinister meaning to the exercise of a person's constitutional right under the 5th Amendment. The right of an accused person to refuse to testify, which had been in

England merely a rule of evidence, was so important to our forefathers that they raised it to the dignity of a constitutional enactment and it has been recognized as 'one of the most valuable prerogatives of the citizen.' We have reaffirmed our faith in this principle recently in *Quinn vs. the United States*. In *Ullmann vs. the United States*, decided last month, we scored the assumption that those who claim this privilege are either criminals or perjurers. The privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent either to a confession of guilt or a conclusive presumption of perjury. As we pointed out in *Ullmann*, a witness may have a reasonable fear of prosecution and yet be innocent of any wrongdoing. The privilege serves to protect the innocent who otherwise might be ensnared by ambiguous circumstances."

Is it not upon that part of the decision of the Supreme Court of the United States expounding the law of the land that you have based your answers?

JUDGE BIGELOW: It is, sir. Thank you.

SENATOR McCAY: Do any other Members of the Committee have any questions?

SENATOR HANNOLD: Yes. Judge, are you familiar with the statute of New Jersey dealing with employees of the State who if they appear for trial for something done in a particular department, whether they misappropriated funds or some other such cause, and they were asked whether they had done it or not and they invoked a similar clause in our Constitution, they thereupon lose their job immediately?

JUDGE BIGELOW: I didn't know there was such a statute. Can you give me the reference?

SENATOR HANNOLD: I don't know such reference but if there is such a statute would you honor that too if it were an employee of the State?

JUDGE BIGELOW: I would follow the law.

SENATOR HANNOLD: How would you honor this law and the State law too?

JUDGE BIGELOW: Of course the Federal law is the supreme law of the State of New Jersey.

SENATOR HANNOLD: Therefore, you would not honor the State law. Correct?

JUDGE BIGELOW: I don't know whether there is any conflict or not.

SENATOR FARLEY: You are conversant with the loyalty oath of school teachers and educators?

JUDGE BIGELOW: Yes, and I wonder when you gentlemen enacted that whether you said in effect to the school boards and perhaps to the control of Rutgers, "Here is the way we are going to handle this loyalty question. You will handle it by requiring every school teacher when employed to take this particular oath."

SENATOR FARLEY: Would it interest you to know that this Senate Gallery was packed by Communists to prevent the passage of that bill regarding the loyalty oath by teachers?

JUDGE BIGELOW: I think it is very interesting.

SENATOR FARLEY: That's a fact. Now, if perchance the loyalty oath was taken by a teacher, say of Rutgers

University or the State University and again there was presented to you the question of his being a Communist, Judge, and he invoked the 5th Amendment to evade the question whether he was a Member of the Communist party, what would you do? Knowing the law to be that he should take the loyalty oath and naturally by your own deduction if he invoked the 5th Amendment - or like in the Lowenstein situation if he said, "I will answer the question between the years 1953 and 1955 but not otherwise", what would you do under those circumstances? You have the State law which requires him to take the loyalty oath and by your own admission it is a fair deduction by the fact that he will not answer except between the years 1953 and 1955. What would you do?

JUDGE BIGELOW: I think he read to you that part of the Slochower case, Senator McCay read it.

SENATOR FARLEY: You would rely on the Slochower case to make your ultimate decision?

JUDGE BIGELOW: I would stick to the law.

SENATOR HANNOLD: As a Member of the Board of Trustees would you vote to hire a professor who admittedly had been a Communist but said presently he was not a Communist?

JUDGE BIGELOW: And I was satisfied he was not now a Communist?

SENATOR HANNOLD: I suppose. That would be up to you, your opinion, yes.

JUDGE BIGELOW: I don't know. I think I might if I thought he would be a good man.

SENATOR HANNOLD: A good teacher?

JUDGE BIGELOW: Yes. If he is a good American. I am not talking about a man who pretends these reforms.

SENATOR HANNOLD: The thing that bothers me all through this is, and I am serious about this, how do you know that a person who refuses to say whether he is a Communist -- how do you find out he isn't?

JUDGE BIGELOW: I don't suppose there is any quick answer to that question. The same way when I was Prosecutor, people came to me and would say, "You wouldn't put me on trial unless you knew I was guilty, would you?" I would say there was no God-given way that I have to know whether a man is guilty or not. I just do the best I can.

SENATOR HANNOLD: Did you, in answer to a newspaperman's question, the other day or night, say that you saw no difference between a murderer or a similar criminal in the State and a Communist?

JUDGE BIGELOW: I don't remember any such comparison. There might have been. I don't know.

SENATOR HANNOLD: If I read from the Newark News of Tuesday, July 31st -- "Asked" and referring to you, "if there was any difference between a suspected murderer and a suspected Communist pleading the 5th Amendment, Judge Bigelow responded 'No'".

JUDGE BIGELOW: I think that is sound. I am talking as a lawyer.

SENATOR JONES: May I have a three minute recess just for the purpose of discussion with Judge Bigelow?

SENATOR McCAY: Your request is granted.

(Recess)

AFTER RECESS

SENATOR McCAY: The hearing will be resumed. Are there further questions which the Members of the Committee desire to ask?

SENATOR RIDOLFI: I have one question.

SENATOR McCAY: Senator Ridolfi?

SENATOR RIDOLFI: Judge Bigelow, suppose you had this set of facts brought to your attention. A particular individual was teaching in a school, a public institution, for the period 1950 to 1956, and suppose during that time he conducted himself in perfect propriety in the classroom. Suppose in 1956 it was established to your satisfaction that he was a Communist. In 1957 his contract comes up for renewal. You are in a position to accept it or reject it. What would you do?

JUDGE BIGELOW: I gather he is now a Communist?

SENATOR RIDOLFI: It has been established to your satisfaction that in 1956 he is a known Communist.

JUDGE BIGELOW: I would not renew his contract.

SENATOR McCAY: Are there further questions?

SENATOR HILLERY: At the beginning of this hearing any of the Senators here were given the privilege of asking a question if they would write it out and hand it to the Committee. This is not my question. It says: "Don't you believe that, in the event of the slightest doubt, this Committee should not confirm an appointee candidate?"

JUDGE BIGELOW: I don't know. I think that is a matter for your conscience to handle.

SENATOR FARLEY: One concluding question. Suppose 20 men, Judge, 20 professors were cited for subversive activities - 20 professors of the State University appeared before your State Board of Trustees and on being asked the question "Are you a Member of the Communist party?" they invoked the 5th Amendment. What would you do concerning their continuing to teach at the University in the interim? Would you permit them to teach or what would you do?

JUDGE BIGELOW: You mean whether they should be suspended pending investigation?

SENATOR FARLEY: They should be suspended?

JUDGE BIGELOW: I don't know.

SENATOR FARLEY: You don't know?

JUDGE BIGELOW: It would depend on the circumstances.

SENATOR FARLEY: The circumstances are - 20 professors brought before you as a Member of the Board of Trustees were asked the question "Are you a member of the Communist Party?" and each and every one invoked the 5th Amendment. My question is what would you do under those circumstances, suspend them or would they be permitted to teach in the State University in the interim?

JUDGE BIGELOW: I think I would say, "Professor Jones, you know these men better than I do and you know what danger there would be in keeping them on active duty. In the meanwhile you use your discretion."

SENATOR FARLEY: You would have the responsibility as a Member of the Board of Trustees. What would you do? I am not concerned about the situation with Dr. Jones. I

think he clearly established himself beyond a doubt by dismissing those professors two years ago. I think he is a wonderful American. But I am asking what you would do, Judge.

JUDGE BIGELOW: I don't know what I would do except put it up to Dr. Jones.

SENATOR FARLEY: I see. That's all Mr. Chairman.

SENATOR McCAY: Are there any further questions?

(No questions) There being no further questions the hearing is adjourned and the matter will be taken under consideration by the Judiciary Committee.

