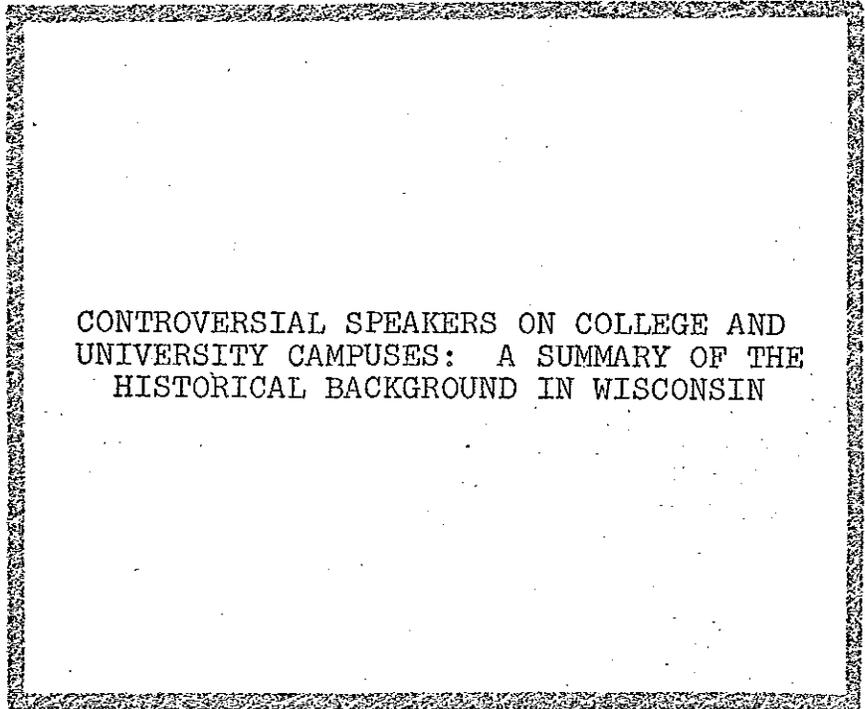


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CONTROVERSIAL SPEAKERS ON COLLEGE AND  
UNIVERSITY CAMPUSES: A SUMMARY OF THE  
HISTORICAL BACKGROUND IN WISCONSIN

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CONTROVERSIAL SPEAKERS ON COLLEGE AND UNIVERSITY CAMPUSES:  
A SUMMARY OF THE HISTORICAL BACKGROUND IN WISCONSIN\*

INTRODUCTION: THE PROBLEM

Over a period of many years there have been sporadic debates both in Wisconsin and in other states with regard to allowing controversial speakers from outside the campus community to use college facilities for lectures. The fact that this is a recurring question indicates that it is not one susceptible to an easy solution. On one side of the question stand those who are concerned lest there be an erosion in our freedom of speech; on the other side, those who are concerned lest impressionable students be attracted to unpopular ideologies. Not only is this a periodically recurring subject, but at the present time legislation is pending in the Wisconsin Legislature relating to it. For these reasons this study was undertaken to present a brief background picture of the situation in this state.

Bill No. 841, A., introduced in the 1963 Legislature by Assemblyman Nile Soik, would authorize the Boards of Regents of the University and of the State Colleges to ban the use of their facilities for speaking purposes by Communist Party members, persons who advocate the overthrow of the government by force, or those "whose presence is not conducive to high ethical and moral standards or the primary educational purposes and orderly conduct of the institution."

This proposal raises such questions as: How have college officials handled this situation in the past? What is the current practice? What effect would the bill have? Should "undesirable" speakers be excluded from campus, or should the campus be open to all ideas?

This resume will deal primarily with the problem as it has related to the University of Wisconsin, with an occasional reference to the State Colleges. The emphasis on the University arises from the greater amount of controversy revolving around it on this subject.

PREVIOUS LEGISLATION IN WISCONSIN

Surprisingly, in spite of long-standing argument, there has been remarkably little legislation on this subject introduced in the Wisconsin Legislature.

Bill No. 391, A., introduced by Assemblyman Lamb in 1949, would have prohibited the use of any state or municipally owned building by the Communist Party, the Third Communist International, or any other foreign agency, political party, organization or government which either directly or indirectly advocates or aids the overthrow by any unlawful means, or a program of sabotage, sedition or treason against the government of the United States.

Bill No. 57, S., 1957, introduced by Senators Panzer and Hollander, would have penalized anyone renting or using a public building for a meeting of a communist front or subversive organization. Both

\* This bulletin was prepared by Patricia V. Robbins, Research Associate.

of these bills went much further than the bill introduced in 1963. They banned the appearance of certain speakers and made the ban applicable to all public buildings, not just those on college campuses. Neither bill was enacted. The 1963 measure does not ban speakers, but permits college authorities to do so.

In addition to specific legislation, the Legislative Council has been concerned with this matter. In conjunction with the appearance on campus in January 1953 of an editor of THE DAILY WORKER under the sponsorship of the Labor Youth League, the Legislative Council asked for information on the University's procedure for approval of student organizations and their activities. Subsequently, in March of that year the council adopted a resolution recommending to the President of the University and to the Board of Regents that the University's policy in regard to student organizations "be re-examined and that appropriate action be taken and that the Regents and the President give a complete report to the council." During the year 1953 both the Student Life and Interests Committee of the University and a special ad hoc committee appointed by the President studied the questions of campus organizations and of outside speakers. In its annual report in December to the President, the Student Life and Interests Committee reaffirmed the Regent's policy as established in 1922. The faculty concurred in this report in a meeting on January 4, 1954.

By Jt. Res. No. 31, S., 1953, the Legislative Council was directed to study the fundamental and long-range policies of the University. The council created the University of Wisconsin Policies Committee. The committee's recommendations, contained in the council's 1955 Report, included the following statement related to our topic: "In general, the University should continue its present policy of placing no restrictions on freedom of speech or assembly beyond those established by State or Federal laws. We are trying to develop self-directing mature citizens capable of making their own evaluation of truth and falsehood. A more dogmatic policy might shield the individual student so much that he would be deprived of this essential educational experience. We believe in freedom of discussion and that continued emphasis on the privileges and benefits of our government and our system of free enterprise will make the youth of Wisconsin better citizens."

#### AUTHORITY OF THE BOARDS OF REGENTS OF THE UNIVERSITY OF WISCONSIN AND OF THE STATE COLLEGES TO EXCLUDE SPEAKERS FROM CAMPUS

##### Wisconsin Statutes

Although there is no specific authority in the Wisconsin Statutes for the Regents either of the University of Wisconsin or of the State Colleges to exclude speakers, both bodies have broad general powers to manage their institutions. Under the statutes their authority includes the following:

##### The University Regents

Sec. 36.03 "The board of regents...shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings, and all other property of said university..."

Sec. 36.06 (1) "The board of regents shall enact laws for the government of the university in all its branches; ...but no instruction, either sectarian in religion or partisan in politics, shall ever be allowed in any department of the university..."

Sec. 36.06 (3) "The board may prescribe rules and regulations for the management of the libraries, cabinet, museum, laboratories and all other property of the university and of its several departments, and for the care and preservation thereof..."

The State College Regents

Sec. 37.11 (1) "To make rules, regulations and by-laws for the good government and management of the same and each department thereof..."

Sec. 37.11 (9) "To cause lectures on any art, science or branch of literature to be delivered in any such college on such terms and conditions as they may prescribe."

Court Decisions and Opinions of the Attorneys General on the Authority of the Regents

There appear to have been no decisions in this state on the power of the Regents to control speakers. Nevertheless, the following court case and opinion of the Attorney General do give some indication of the scope of their authority.

A Wisconsin Supreme Court case in 1882 (State ex rel. Priest vs. The Regents of the University of Wisconsin, 54 Wis. 159), which related to the powers of the Board of Regents to exact certain fees from the students, said: "The board is a creature of law, and hence cannot rise above the law, nor be a law unto themselves, in matters outside of the scope of the powers granted to them. But this does not mean that it can do no act except such as is specifically mentioned in the statute. It would be altogether impracticable to prescribe by statute the numerous and varying duties of such a board. Much must necessarily be implied from the character and objects of the corporation, the nature of the trust imposed, and the general powers granted." The court concluded that the general powers of the board authorized it to enact the bylaw in question.

An Attorney General's opinion in 1933 (22 Atty. Gen. 332) stated that the Board of Regents "is authorized to adopt a resolution providing that the use of the university buildings by public bodies and nonprofit-making associations having an educational program be approved on a charge basis and at times not interfering with other university uses.

"...such power and duty follows as an incident to the power and duties expressly conferred on the regents to take charge of the buildings and property of the university and to prescribe rules and regulations for the management of the buildings and property of the university."

SPEAKERS EXCLUDED FROM UNIVERSITY CAMPUS BUILDINGS

The following compilation is merely a random sample of speakers who have been denied the use of University buildings over the past several decades. The list has been garnered from newspaper clippings, and from Curti and Carstensen's book, The University of Wisconsin, 1848-1925, Vol. II; and no attempt was made to compile a complete list.

1. Max Eastman - In 1917 a scheduled address by Max Eastman, editor of the Socialist journal, The Masses, was canceled by request of President Van Hise. The decision was made on the basis of the rule forbidding dissemination of propaganda from a University platform. It was said that precedent existed for this in the past denial of the use of the buildings to suffragists and Christian Scientists.

2. Lincoln Steffens - In 1921 the University Regents refused the request of the Federated Press League of Madison for the use of the gymnasium for a speech by Steffens, the author famous as "the muck-raker."

3. Scott Nearing - The Social Science Club in 1921 was denied the use of the gymnasium for a lecture by Nearing, an economics professor who had been dismissed from the University of Pennsylvania for radical views. The decision was made by a faculty committee, but approved by President Birge.

4. Mrs. Kate Richards O'Hare - In 1922 President Birge, when presented by the Social Science Club with a list of proposed speakers, declined to approve Mrs. O'Hare, who had been the Socialist candidate for vice president in 1920, and the name was withdrawn. At the same time the President rejected the name of Upton Sinclair. Upon appeal to the Board of Regents, however, Mr. Sinclair was permitted to speak.

5. Mrs. Bertrand Russell - In 1928 a speech by Mrs. Russell under the auspices of the University Student Forum was canceled on the advice of President Glenn Frank and Dean Scott Goodnight.

6. Elizabeth Gurley Flynn - In 1957 Provost J. Martin Klotsche of the University of Wisconsin - Milwaukee denied the use of University facilities to Mrs. Flynn, a member of the Communist Party's National Committee. Dr. Klotsche said that, contrary to University regulations, the speech had not been registered a week in advance.

POLICIES ON EXCLUDING SPEAKERS FROM CAMPUSES

At various times in its history the University Board of Regents or the President has stated the school's policy with regard to the regulation of speakers on campus. In 1922, there was considerable agitation for the establishment of a student forum board to pass on speakers brought to the campus by student organizations. At that time the Board of Regents concluded that it had "ultimate control of university buildings and a measure of responsibility for the speakers who speak from a university platform. The regents

cannot, consistent with their duty, divest themselves of this control and responsibility."

Following its decision in 1922 to allow Upton Sinclair to speak on the campus, the board adopted a resolution which stated: "The action of the Board of Regents in 1894, 'Whatever may be the limitations which trammel inquiry elsewhere, we believe that the great State of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found,' shall be applicable to teaching in the classroom and to the use of university halls for public addresses, under the control of the President of the University with appeal to the Regents."

In March 1952 the Board of Regents approved a statement prepared by President Fred concerning speakers. It read:

"From time to time the University administration is asked about the policy of the University with respect to the appearance of off-campus speakers for lectures or discussions which are sponsored by student or faculty groups.

"It is important that the purpose of the University regarding these meetings be clearly understood.

"True to its time-honored traditions, the University of Wisconsin provides a forum for the free exchange of ideas and viewpoints upon current events and issues.

"On October 15, 1949, the Regents of the University reaffirmed their belief in the intellectual right of students and teachers to explore and study critically our way of life and systems which challenge it. That declaration of principles stated:

"In the present world-wide discussion of the future of human society, we believe that the University of Wisconsin, and all other institutions of higher learning, have a unique opportunity and responsibility. An opportunity critically to study the proposals and claims of systems alien to our own is the intellectual right of every student. And freedom to explore and discuss the issues in the field of his special competence is the right of every teacher. But to teach the foundations of "our American way of life," economic, political and social, and the entire cultural life it makes possible, is the inescapable obligation of the University to its students. We believe this is best done through fair-minded, scholarly teachers working in many different fields of learning, and that it is now being done in this University."

The 1952 statement continued:

"It is in the light of these principles that the Forum committee, a student committee of the Wisconsin Memorial Union, each year arranges a series of lectures and discussions upon timely topics, and invites speakers representing different fields and viewpoints to appear in this forum."

A major policy statement adopted in 1954 by the University's Committee on Student Life and Interests and still expressive of its principles stated that the primary objectives of the guest speaker programs of student organizations were: "(A) to encourage discussions that will make the maximum educational contribution; and (B) to demonstrate to students that freedom of discussion is a reality at the University of Wisconsin. A safeguard requirement is (C) that the program will not damage the University or interfere with its over-all educational program."

With reference to point (B) above, the statement noted that the governments of the United States and of Wisconsin have restricted basic freedoms only where there is convincing evidence of danger to national security. "The University follows their example in its zealous concern to protect the spirit of free inquiry and the educational opportunity for free and responsible self-government of student organizations, restricted only when there is convincing evidence of danger to the over-all educational program." No restrictions would be imposed on speakers other than those imposed by state and national laws. Further conditions provided that the student organization must assume full responsibility for its speakers, and the selection of speakers should not be imposed upon it by any outside organization. Speeches should be open to the University community, and there should be opportunity for questions. The statement also pointed out that an invitation to an outside person to speak does not imply approval of his views.

With regard to point (A) above--discussions providing maximum educational value--the speaker should be qualified to discuss his subject, and discussion should be on an intellectual level. To insure that the speaker will not damage the over-all educational program of the University (point (C)), the address must not advocate the overthrow of any government of the United States by force or violence or violate other laws regarding freedom of speech. The address should not be designed to promote action that would directly interfere with any part of the educational program. Speakers should be selected on the basis of their individual qualities and conduct. "The University should be protected against disrepute consequence upon the presentation as guest speaker to a student audience of a person whose public record of conduct has clearly established him as obnoxious or offensive to society." However, "conduct" does not include advocating opinions or membership in organizations; "obnoxious or offensive to society" means by reason of serious violations of law or of moral standards as established by the courts; and "public record" includes convictions and indictments. A University forum should not be used for a personal defense against charges of misconduct or of illegal action.

With regard to the procedure to be followed by student organizations in bringing speakers to the campus, the statement said that such organizations were expected to select qualified speakers, to consult with their faculty advisors, and to secure pertinent information and professional advice concerning the competence and intellectual qualifications of the speaker. The information was then to be submitted in writing to the Office of Student Organization Advisors, along with the request for registration, in order to be considered by the Committee on Student Life and Interests.

Another explanation of the University's position appeared in a letter written by President Fred to the Commander of the American Legion, Wisconsin Department, in January 1956. The President wrote: "Because students must be convinced that they have the freedoms and responsibilities equal to citizens outside the University, we do not enact, and would oppose, restrictions on discussion and inquiry other than those applicable to all citizens in the state. Students should be equal to other citizens in respect to viewpoints they may hear or discuss, organizations they may form, or printed material they may read."

In the minutes of a meeting held by the Regents of the University on March 10, 1961, the board stated: "...respect for tradition must be combined with readiness to try new approaches. This was never more important than it is today. Hence we must continue to guard the University's time honored freedom of experimentation and expression--that fearless, democratic process which is the essence of the ceaseless search for truth. We believe that the only indoctrination worthy of this institution is in the values of freedom and free inquiry. For this we need exposure to a variety of viewpoints, brought together in the University's own example of freedom's effective power. This is basic in our form of government and, we believe, its surest safeguard."

At a May 4, 1962 Regents' meeting there was discussion of the scheduled speech on the Madison campus by Gus Hall. In reporting on this to the Regents, Dean Luberg said: "We /the Student Life and Interests Committee/ do not endorse his appearing, we only permit it, and in accordance with the rules set down by the faculty and approved by the Regents. This (speakers at the University from off-campus) had very thorough study by a Legislative Committee, which by a vote in 1953-54 concurred specifically with the precepts and concepts established by the Regents over many years of practice and by the faculty. Experience has been that our University students have managed themselves very well in such situations. They have asked discerning and intelligent questions, and they have uniformly made very clear the false logic, misconceptions, and misinformation of those who profess such extreme positions as Mr. Hall will profess."

With reference to the policy of the State Colleges in this field, the course of action followed is up to the individual faculty and president of each institution in the system.

#### RECENT ACTIONS IN OTHER STATES

In 1963 two states--Ohio and North Carolina--took legislative action with regard to regulating campus speakers. The Ohio law gave college and university boards of trustees authority to withhold use of facilities as follows:

"The board of trustees of any college or university, which receives any state funds in support thereof, shall have full power and authority on all matters relative to the administration of such college or university.

"Such power shall include but not be limited to the authority to withhold use of the facilities of any such college or university for meetings or speaking purposes from persons who are members of the communist party, persons who advocate or persons who hold membership in or support organizations which advocate the overthrow of the government of the United States and its free institutions by force or violence or whose presence is not conducive to high ethical and moral standards or the primary educational purposes and orderly conduct of the functions of the institution."

The board could delegate its administrative authority to the president or other administrative personnel.

As in Wisconsin, the boards of trustees of the various colleges and universities in Ohio have broad authority to govern their institutions. For example, Sec. 3335.08 of Page's Revised Ohio Code states: "The board of trustees of the Ohio State University may adopt bylaws, rules and regulations for the government of the university." Sec. 3335.10 continues: "The board of trustees of the Ohio State University shall have general supervision of all lands, buildings, and other property belonging to the university, and the control of all expenses therefor, but shall not contract a debt not previously authorized by the general assembly." In the light of these sections, the legislation enacted does not seem to grant any new authority not already possessed by the boards.

A look at the legislative history of the Ohio bill, however, clarified the matter. As originally introduced, the bill banned such speakers outright. This aroused a great deal of controversy, and by the time the bill was enacted it had been watered down drastically. In signing the bill Ohio's Governor Rhodes said that its chief virtue is to make explicit the "full authority" of the trustees to manage university affairs, a power he had "always assumed to be the law." He further remarked that the bill did not settle the dispute. As long as the debate goes on, "college trustees and administrations will keep sharply aware that on them rests the responsibility of seeing that their students are trained to challenge propaganda, recognize and reject falsehood, seek the truth and apply the lessons of our nation's history in building for the future."

North Carolina also passed a law in 1963, but--unlike the Ohio law--it provided a definite prohibition.

"No college or university, which receives any state funds in support thereof, shall permit any person to use the facilities of such college or university for speaking purposes, who: (A) Is a known member of the Communist Party; (B) Is known to advocate the overthrow of the constitution of the United States or the state of North Carolina; (C) Has pleaded the Fifth Amendment of the Constitution of the United States in refusing to answer any question, with respect to communist or subversive connections, or activities, before any duly constituted legislative committee, any judicial tribunal, or any executive or administrative board of the United States or any state."

ARGUMENTS FOR AND AGAINST BANNING SPEAKERS FROM COLLEGE CAMPUSES

Pro

1. Freedom of speech is not absolute. It does not, for example, protect anyone who would shout "Fire!" in a crowded theater and cause a panic. Why should it encompass those who would destroy us if they have the chance?
2. Society has a right to protect itself, a right of self-preservation. The communist program is geared to use any means necessary to accomplish its ends. Speech is one of the methods used to incite action.
3. To subject impressionable teen-age minds to such propaganda is to reach them at a time when knowledge and experience have not yet equipped them to recognize the errors in the ideas.
4. Speakers with views repugnant to the majority should be permitted as long as there is some basis of communication, some common acceptance of civilized standards. The communist and fascist philosophies, however, do not embrace a set of values or standards common to the rest of us. There is no meeting ground on which a rational discussion can be based.
5. Idle curiosity to see how a communist looks and talks, like viewing a freak, is an unworthy motive for listening to such a speaker.

Con

1. Freedom of speech should encompass all speech unless there is a "clear and present danger" that the words will bring about the results desired by the speaker. The danger, however, must be imminent, with no time for discussion or refutation of the words.
2. In prohibiting certain speakers, there is too much danger that it will lead to suppression of anyone espousing an unpopular idea. History is replete with suppression of those whose ideas eventually came to be accepted by the majority.
3. Ideas must be free to circulate in the market place and win their acceptance or rejection in competition with other ideas. If people cannot be trusted to reject false ideas, then a democracy cannot survive.
4. It is important to keep the channels of communication open, regardless of whether or not we can seemingly communicate.
5. Exposure to communist ideas will enable students to understand the communist mentality and help prepare him to cope with the problem of dealing with the communists in today's world. The more contact we have with them the greater our understanding of them and our ability to refute their arguments.

Pro--Continued

6. We would not invite a domestic gangster to speak to us. Why, therefore, should we invite an international gangster?
7. Denying these people the use of campus facilities does not deny them freedom of speech, but only the use of certain tax-supported facilities.

Con--Continued

6. To deny freedom of speech to communists would be the equivalent of adopting their policy of suppressing freedom of speech.
7. To deny freedom of speech in a particular place on the grounds that the person can speak elsewhere is frequently to deny him, actually and effectively, a place to speak at all.

## CONCLUSIONS

Although for several decades past there has been considerable intermittent controversy over the desirability of allowing certain persons to lecture on campus, to date the Wisconsin Legislature has not enacted a law prohibiting anyone of whatever viewpoint from speaking. Given these circumstances, the University and the State College Boards of Regents are free to regulate these matters under their broad grants of authority to govern their respective institutions.

From time to time, particularly during the 1920's, the University has exercised its authority in this area and has banned various speakers. In recent years, however, this has seldom happened. Approval of a proposed speaker is basically in the hands of the faculty Student Life and Interests Committee, while the Board of Regents sets the policy and is the ultimate court of appeal.

It seems clear that in the absence of specific legislative statement to the contrary, either Board of Regents has authority to determine such policy. In this situation, whether it be an advantage or a disadvantage, the policy could fluctuate with changes in board membership and with changes in the general climate of public opinion. In practice, and from a long-range point of view, the policy has remained remarkably constant. On the other hand, a specific prohibition on certain types of speakers by legislative enactment would be a less flexible device, but would presumably reflect the wishes of the electorate. The current bill before the Legislature, it should be noted, does not ban any speakers, but apparently reinforces the right of the Boards of Regents to act according to their best judgment.

In general, advocates of banning certain speakers from campus appearances would proscribe those who are communists and others who believe in the overthrow of the government by force. The University position seems to distinguish between those who might believe in the overthrow of the government by force or violence, but do not so advocate in their speeches, and those who do. It appears to permit the former and prohibit the latter. That is, it does not allow overt exhortation.

The two positions--permitting all speeches or banning certain specified types of speakers--are not, of course, the only alternatives. In addition, there are not only varying degrees of prohibition, but there are other approaches to the problem. One such approach might lie in greater efforts toward a better balance of speakers in order to insure representation of all viewpoints. Another might be the establishment of a special series of speakers to promote "the American way of life."

Naturally such solutions are not without their hazards also. The Union Forum Committee at the University attempts to achieve balance; the recent symposium on dissent did also. However, many of the speakers at the University appear there through invitation by student organizations. Inevitably some organizations are more active than others in bringing speakers to campus. Thus, if one viewpoint is heard more frequently than another, the remedy would lie in increased activity by those with differing views in obtaining speakers who represent those views.

If a special series of speeches were established for the specific purpose of promoting "the American way of life," the question would soon arise, What is "the American way of life"? Problems of definition need not necessarily discourage the use of such a device, but the difficulties should be recognized.

In conclusion it might be pointed out that the speakers who are brought to a campus are merely a part of the total educational process. They are brought there in an educational context to enable students to learn more about various philosophies and ideas by means of direct contact. In considering their effect on students, such speakers would probably have to be evaluated in terms of the total educational environment.

Sources: University of Wisconsin Committee on Student Life and Interests, Objectives, Policies and Regulations concerning the Presentation of Guest Speakers from Off Campus by Student Organizations, adopted June 10, 1954 and November 11, 1954; Merle Curti and Vernon Carstensen, THE UNIVERSITY OF WISCONSIN, 1848-1925, 1949, Vol. II, pp. 73-74, 144, 145, 150, 155; President Fred, Letter to Earl Sachse, Executive Secretary, Legislative Council, dated January 14, 1954, together with Chronological Resume: Off-Campus Speakers Sponsored by Student Organizations ('Subversive'); Wisconsin Legislative Reference Bureau, CLIPPINGS: ACADEMIC FREEDOM IN WISCONSIN, Part 2; CLIPPINGS: COLLEGES AND UNIVERSITIES, Part 3; CLIPPINGS: FREEDOM OF SPEECH, Part 5; CLIPPINGS: COMMUNISM IN SCHOOLS AND INSTITUTIONS OF HIGHER LEARNING, Part 8.