how long the hearings would last."

The U.S. Court of Appeals on 22 February upheld the lower court's ruling and, in a 30-page opinion (No. 80-2013), added some very strong language on academic rights—a point the state of Wisconsin had raised in court. "It is probably fair," wrote the three-judge panel, "to say that the character and extent of intervention would be such that, regardless of its purpose, it would 'inevitably tend to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor.' * In addition, the researchers could reasonably fear that additional demands for disclosure would be made in the future. If a private corporation can subpoena the entire work product of months of study, what is to say further down the line the company will not seek other subpoenas to determine how the research is coming along? . . .

"We conclude there is little to justify an intrusion into university life which would risk substantially chilling the exercise of academic freedom."

Far from considering the rulings a total defeat, attorneys for Dow point to some caveats expressed by the courts. "I take some comfort," says Warren, "that both opinions seem to be saying that if Allen were to testify in future proceedings, we could reopen the issue of performing discovery on the studies in question."

Warren says the whole issue for the moment is moot, since Allen is not testifying and in any event the cancellation hearings are now in limbo. In March 1981, with the arrival of the Reagan Administration, Dow, EPA, and other interested parties entered into negotiations to settle the cancellation issues outside the chambers of the EPA administrative law judge.

It is therefore somewhat ironic that the federal appellate court went ahead and handed down its opinion on the issue of access to unpublished data. The Allen case had been argued before the appellate court in January 1981, and, after the settlement negotiations began 2 months later, Dow attorneys wrote to the court saying a decision was no longer necessary. The three judges continued to deliberate on the case, however, and eventually issued their strongly worded statement on academic freedom. Perhaps they felt the overall issue still needs to be addressed even though the point for the case in question had ceased to be germane.—WILLIAM J. BROAD

*Quoted by the Appellate Court is an opinion written by Chief Justice Earl Warren, given in Sweezy *v.* New Hampshire, 354 U.S. 262 (1957).

Tide of Creationism Stemmed for the Nonce

When creationist bills were passed last year in Arkansas and Louisiana, the 1982 legislative session seemed to promise a bumper crop of similar measures. But, with legislative sessions nearing an end in many states throughout the country, the creationists have yet to score another victory. Paul Ellwanger, author of the Arkansas bill, attributes the lack of current success to "the repercussions of Judge Overton's decision in Arkansas."

Meanwhile, the creationists are looking to encouragement from the trial pending over the Louisiana law. With two cases filed concerning this law, thus making its resolution exceedingly complicated, recent developments seem to be favoring the law's supporters.

So far in the rest of the country, only one state, Mississippi, has a creationist bill that has made it out of committee to the legislature. The Senate passed the measure by a large majority the day the Arkansas decision was due, but the bill became tied up in the House education committee and so the initiative died.

In six states—Georgia, Iowa, Kansas, Maryland, Missouri, and West Virginia—bills progressed no further than committee consideration. And in four more—Arizona, Florida, South Carolina, and South Dakota—bills were withdrawn before they reached committee stage.

In all these instances Overton's strongly worded judgment on the unconstitutionality of the Arkansas law has apparently had a chastening effect. "What we are looking to now," says Ellwanger, "is the case coming up on the Louisiana law. If we win there, and I expect we will, then a lot of states will move ahead on new bills." Ellwanger already has an improved draft bill virtually complete in anticipation of a creationist triumph in Louisiana.

Late last year creationist lawyers Wendell Bird and John Whitehead teamed up with Louisiana's attorney general and filed suit in Baton Rouge asking for judgment on the law's constitutionality. A second suit was immediately filed by the American Civil Liberties Union (ACLU) challenging the law's constitutionality, very much along the lines of the Arkansas case. On 18 March the judge in New Orleans, where the ACLU's suit was filed, stayed that suit pending the outcome of the first case. The creationists are delighted with this development because, in the absence of ACLU involvement, their chances of success are clearly improved. The ACLU has yet to decide on its next move.—***Roger Lewin***

Bill Assigns NIOSH to Health Institutes

Members of the biomedical research community are sighing with relief that the authorization bill for the National Institutes of Health (NIH), recently introduced by Representative Henry Waxman (D–Calif.), does not include spending ceilings. Rumors had circulated that Waxman, chairman of the health and environment subcommittee of the Committee on Energy and Commerce, would again try to impose a cap on authorizations for NIH as he did 2 years ago. The provision caused an uproar among biomedical researchers and the provision was eventually defeated.

The bill does contain at least one provision that could stir a good fight. The legislation would transfer the National Institutes of Occupational Safety and Health from the Centers for Disease Control to NIH. The location of the occupational health research institute has been the subject of controversy during the past year because the Administration wants the agency's headquarters moved to Atlanta, where the Centers for Disease Control are located. Congress blocked the move after former agency officials testified that it should remain in the Washington, D.C., area and suggested also that NIH may be its most suitable home. Some officials in the biomedical community say, however, that they are uncomfortable with the idea. The agency is usually surrounded by so much political wrangling between industry and labor that NIH may want to keep its distance.

Waxman's bill also requires NIH to help researchers from small businesses apply for grants and contracts

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