

## Publisher Challenges Use of Supreme Court Funds for Movie

# Can Federal Film Be Copyrighted?

By Lyle Denniston  
Washington Star Staff Writer

A top official of the federal judiciary has been sued for using Supreme Court funds to carry out an allegedly "improper contract" for historical films about the court.

A Washington publisher, M.B. Schnapper of Public Affairs Press, filed the suit yesterday in U.S. District Court here.

It is aimed at William E. Foley, recently appointed by the Supreme Court as director of the Administrative Office of U.S. Courts. In addition, the suit names Public Broadcasting Service and Station WQED in Pittsburgh, which produced the films.

The complaint contends that the contract illegally restricts public access to the films by putting them under a copyright that is owned by the government.

It asks the District Court to void the copyright, on the theory that no government publications or films may be copyrighted. If the copyright were voided, broadcasters would be free to use the films on commercial television, and movie companies could copy the films for showing in theaters or for public sale for profit.

**THE CONTRACT** for the films forbids their use on commercial television and bars their use at performances for which admission is charged.

The five films involved in the lawsuit are titled "Equal Justice Under Law." They were produced under the close supervision of a U.S. judicial conference committee that was appointed by Chief Justice Warren E. Burger and that included three other Supreme Court justices as members.

Produced as part of the federal judiciary's celebration of the nation's Bicentennial last year, as well as the 200th anniversary of the Constitution in 1987, the 30-minute films depict some of the major decisions in the court's early history.

Supreme Court press officer Barrett McGurn said yesterday that the films "have been shown widely on public TV."

He said they have been available for free loan from Association Films, Arlington, and recently have been offered for sale by the government. Next year, they will be offered for rent by the government, he said.

Schnapper's lawsuit contends that the contract for production of the films violates the Copyright Act. That law, the complaint contends, "prohibits copyright in 'publications of the U.S. government.' The scope of the statute includes works such as the films at issue."

**THE LAWSUIT** says that approximately \$500,000 in funds provided to the Supreme Court for the Bicentennial was used to pay for production of the films by WQED.

Although the contract was with the Administrative Office of U.S. Courts, which is assigned the copyright, the preparation of the films was supervised by a judicial conference committee headed by U.S. Appeals Court Judge Clement F. Haynsworth.

Also on that committee were Supreme Court Justices Harry A. Blackmun, William J. Brennan Jr. and Byron R. White. Chief Justice Burger and Justice White apparently have been most closely involved with the project.

Neither the Supreme Court itself nor any justice is directly involved in the new lawsuit. Administrative Office Director Foley, however, is directly responsible to Burger and the court.

Schnapper said in an interview that he filed the suit not only to get the films available for greater public access and use but also to demonstrate problems under the Copyright Act of putting controls on materials produced with public funds.

**SCHNAPPER SAID** he understands that \$447,000 in public funds was used to pay for producing the films. He said he also has been told that \$50,000 more was spent for promotion and an additional \$32,000 for distribution.

The publisher suggested that his lawsuit might ultimately have some impact upon the Supreme Court's own practice of forbidding commercial use of the tape recordings of the court's oral hearings.

In addition, Schnapper said, his lawsuit may have some bearing upon the Supreme Court's role in deciding,

as a court, whether to allow public access to judicial records or documents.

The court is now considering a test case on whether some of former President Richard M. Nixon's famous White House tapes — the ones used at the Watergate cover-up trial

— may be offered for public sale and broadcast on commercial TV.

Schnapper himself won an important test case against copyrighting of government documents 10 years ago.

*pickover case*