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necessarily curtail constitutional liberties; and when "mass evacuation of groups from a given area" may be deemed necessary in time of national emergency.

**MILITARY LAW—RE-ENLISTMENT AS REVIVING NAVY COURT-MARTIAL JURISDICTION OVER OFFENSES COMMITTED DURING PREVIOUS SERVICE**

After the relator had been honorably discharged from the Navy and had re-enlisted, he was tried and convicted by a general court-martial for offenses alleged to have been committed during his earlier enlistment. Held, reversing the order of the district court sustaining a writ of habeas corpus, that since an administrative interpretation is only evidence of the meaning of a statute, a later interpretation may take precedence and allow the court-martial to exercise jurisdiction. United States ex rel. Hirshberg v. Malanaphy, 168 F. 2d 503 (C. C. A. 2d 1948).

For seventy years the Navy had interpreted the court-martial statute to mean that, except for offenses involving fraud, a member of the Navy who had received an honorable discharge and re-enlisted, no matter how soon afterward, could not be tried by court-martial for offenses committed during his prior enlistment. But in 1932 the Navy adopted an opposite interpretation, which was incorporated into Article 334, Naval Courts and Boards, 1937. It is required that such instructions issued by the Executive shall be recognized as the regulations of the Navy, and as such they have the force of law. That this provision was only intended to recognize the power of the President to alter regulations which he was originally

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25. In this respect, Mr. Justice Rutledge, in the instant case, calls attention to Duncan v. Kohamakoku, 327 U. S. 304 (1946), and Ex parte Milligan, 4 Wall. 2 (U. S. 1866). See also Kiyoshi Hirabayashi v. United States, 320 U. S. 81 (1943).
26. As to this possibility, Mr. Justice Rutledge, dissenting in the instant case, cited Hirabayashi v. United States, supra. See also Toyosaburo Korematsu v. United States, 323 U. S. 214 (1944).
2. Ibid., Article 14, which corresponds to Article 94 of the Articles of War, 41 Stat. 805 (1920), 10 U. S. C. § 1566 (1946). The latter was held to be unconstitutional in United States ex rel. Flannery v. Commanding General, 69 F. Supp. 661 (S. D. N. Y. 1946).
4. Issued by the Secretary of the Navy, March 4, 1937, and approved by the President, March 5, 1937. It reads, inter alia: "... if an officer reenters service... he may be tried by court-martial for an offense committed during his previous service, whether or not the offense is one for which trial by court martial after separation from the service is specifically authorized by statute. ... Similarly... an enlisted man. . . ."
7. See note 5 supra.
competent to adopt . . . without express authority of Congress” and that “no just rule of construction would authorize giving to this provision the force and effect of a general delegation of legislative authority to the Executive” has never been questioned.

Though omissions and ambiguities in a statute are therefore not to be remedied by legislation disguised as administrative interpretations, the courts occasionally precede classification of an executive measure by an evaluation of the alternative results that would be reached by holding it “legislative” or “administrative.” Here, however, the court made a distinction between administrative interpretations, which, as regulations, “extend” a statute, and those which merely evidence the legislative intent. That the former can never be done administratively the members of the court agree, but they differ on the evaluation which should be given the conflicting administrative interpretations as evidence. The cases would seem to support the majority position that although official interpretations, announced simultaneously with the enactment of the statute and thereafter long continued, demonstrate a legislative intent consonant with those interpretations, a subsequent change in construction or practice may suffice to overcome the force of that evidence. Nor is the court influenced by the fact that prior to 1932 Congress had re-enacted the Army court-martial statute, which had received an administrative interpretation identical with that of the Navy.

8. 13 Ops. Att’y Gen. 10 (1869).
9. See Koshland v. Helvering, Commissioner of Internal Revenue, 298 U. S. 441 (1936), where the Treasury Department’s definition of “cost” of stock purchase was held to have been an invalid attempt to modify the statute, which was silent as to definition; Lynch, Executrix of Lynch, Collector of Internal Revenue, Deceased v. Tilden Produce Company, 265 U. S. 315 (1924).
10. See Alaska Steamship Co. v. United States, 290 U. S. 256 (1933), where an administrative interpretation apparently contrary to the express wording of the statute was upheld because it reached the most reasonable result and therefore the one the Court felt Congress must have intended.
12. See White v. Winchester Country Club, 315 U. S. 32 (1942); see 42 Am. Jur. § 77 et seq.
13. See Houghton v. Payne, 194 U. S. 88 (1904), where the Court upheld the Post Office Department’s reversal of a sixteen year old interpretation of the postal statute with respect to the classification of certain kinds of matter as second or third class mail; accord, Association of Clerical Employees v. Brotherhood of R. & S. Clerks, 85 F. 2d 152 (C. C. A. 7th 1936). In the cases holding that administrative interpretations are controlling (see note 12 supra) of the question of legislative intent, the operative fact of a subsequent change in administrative construction does not appear. It would be improper therefore to consider these cases as dicta for the converse of the proposition in the text.
14. See New York, N. H. & H. R. R. v. Interstate Commerce Commission, 200 U. S. 361 (1905), where the “familiar rule” of statutory construction is stated: “ . . . a construction made by the body charged with the enforcement of a statute, which construction has long obtained in practical execution, and has been impliedly sanctioned by re-enactment of the statute without alteration of the particulars construed, when not plainly erroneous, must be treated as read into the statute.” Judge Frank, dissenting, cites this case as applicable to the case at bar, inferring that the Army and Navy court-martial statutes are so much akin that the re-enactment of one implies re-enacts the other. Albeit novel, the suggestion is entirely reasonable, in view of the probability that Congress intended that Army and Navy personnel be treated in the same manner.
It is submitted that in deciding that the Navy had power to make an authoritative declaration with respect to the scope of its court-martial jurisdiction, the court construed the statute in an unanticipatedly liberal manner. Heretofore a growing civil judicial sentiment against the extension of military judicial power has resulted in a narrower construction.\textsuperscript{18}

\section*{MONOPOLY—VIOLATION OF ANTI-TRUST LAWS THROUGH COPYRIGHT COMBINATION}

Defendant, American Society of Composers, Authors and Publishers, a voluntary association, separated the legal rights\textsuperscript{1} flowing from copyrights assigned to Ascap by its individual members. The synchronization right, for use as background music in motion pictures, was sold to the film producers, while the right of public performance was specifically excepted in the sale of the synchronization right to the producers, and was sold to the plaintiff motion picture theatre operators by annual blanket licenses over a thirteen-year period. Plaintiff exhibitors contended that Ascap's refusal to permit buying of both rights when purchasing a complete motion picture from the producers, coupled with the payment of annual blanket license fees to Ascap, violated the Sherman Anti-Trust Act\textsuperscript{2} and the Clayton Anti-Trust Act.\textsuperscript{3} Claims for injunctive relief\textsuperscript{4} from Ascap's practices, and for damages based on past license fees, were predicated upon both statutes. \textit{Held}, that Ascap's indulgence in these practices constituted a violation of the anti-trust laws; but since plaintiff failed to show injuries, money damages denied. \textit{Alden-Rochelle, Inc., v. American Society of Composers, Authors and Publishers, 79 F. Supp. 315} (S. D. N. Y. 1948).

A copyright holder is granted a monopoly,\textsuperscript{5} albeit limited by statute, in his work; but the protection granted by law does not extend to a combination of patents or copyrights effecting a restraint of trade,\textsuperscript{6} even though necessary.

\begin{itemize}
\item 5. See note 1 supra.
\item 6. "It thus appears that patent pools in the future cannot be built on a structure where a license to the pool is all that is allowed, but presumably if any license is offered, then the licensee must be permitted, if he so desires, to obtain a license to any single patent." U. S. v. Paramount Pictures, 68 Sup. Ct. 915 (1948), Levi, \textit{The Antitrust Laws and Monopoly}, 14 U. of Chi. L. Rev. 153, 181 (1947). "The lawful individual monopoly granted by the patent statutes cannot be unitedly exercised to restrain competitors." Standard Oil Co. (Indiana) v. U. S., 283 U. S. 163 (1931); State v. Creamery Package Mfg. Co., 110 Minn. 415, 435, 126 N. W. 126 (1910).
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