

TITLE I—"MALLORY" RULE

As you know, title I of the bill would modify existing law (interpretation of rule 5(a) of the Federal Rules of Criminal Procedure) to prevent the courts from disqualifying statements and confessions solely because of delay between the arrest and arraignment of a suspect. The Supreme Court in *Mallory v. United States*, 354 U.S. 449 (1957), and the earlier decision in *McNabb v. United States*, 318 U.S. 332 (1943), placed limitations on the use of confessions under certain circumstances of delay between arrest and arraignment. The U.S. Court of Appeals for the District of Columbia circuit applied the *Mallory-McNabb* rule in *Killough v. United States*, 315 F.2d 241 (D.C. Cir. 1962) resulting in much discussion of the rule by the bar and the public. The Deputy Chief of Police appeared before the bar association and discussed problems of the Police Department in investigations and prosecutions under the rule.

Thereafter the president of the association appointed a committee of experienced lawyers (some very experienced in the criminal field and others less experienced in that field) to study the matter. On March 7, 1963, the committee submitted its report recommending (with one dissent) four bills or legislative enactments. The first recommended bill would deal with the *Mallory* rule and is generally consistent with title I of H.R. 7525, except that it would provide certain additional safeguards not included in H.R. 7525. A copy of the committee report is forwarded herewith as attachment 1. The board of directors of the association unanimously approved the report in principle.

The association's committee on criminal law and procedure on March 20, 1963, adopted a report opposing the report of the special committee and specifically opposing H.R. 1930 to amend the *Mallory* rule much as title I of H.R. 7525 would do. The committee's report is enclosed as attachment 2. Because of this position the matter was scheduled for consideration and debated at the regular meeting of the association held on April 16, 1963. The association membership voted down the special committee's recommendation by a standing vote of the membership (30 Journal of the Bar Association of the District of Columbia 263, 268). That position of the association has never been reconsidered. However, the matter is now referred to the association's criminal law and procedure committee for recommendation.

TITLE II—"DURHAM" RULE

Title II of H.R. 7525 would abolish the rule on criminal responsibility applied in *Durham v. United States*, 94 U.S. App. D.C. 228, 214 F.2d 862 (1954), and other cases, and would provide that insanity is an affirmative defense to be asserted and proven by the accused.

The association has never been able to reach agreement to support similar proposals. As is noted in House Report 563, 87th Congress, 1st session, page 20, in September 1959, a proposal to abolish the *Durham* rule and substitute a statutory rule dealing with insanity as a defense in a criminal case was voted down by the membership (26 Journal of the Bar Association of the District of Columbia 301, 316, 448-449). A copy of the 1959 committee report and dissent are enclosed as attachment 3.

In connection with H.R. 7052, 87th Congress, our mental health committee carefully studied the problem anew in 1962. The exhaustive studies resulted in a majority report of some 50 pages and a minority report of some 15 pages, each of which were transmitted to you by letter from the association's executive secretary, on April 12, 1962, for assistance and guidance of your committee and its staff in considering the *Durham* rule legislation. We refer you to those reports as the product of hours of study by informed lawyers rendering a public service. The association has no further position on this matter.

TITLE III—DETENTION FOR INVESTIGATION

The association's special committee on the *Killough* case considered this subject in its report (see pp. 6-7). Likewise, the committee on criminal law and procedure considered it in its adverse report (pp. 1-3 on H.R. 1929). The vote of the association rejected the special committee's report which recommended legislation similar to title III. The association's position remains unchanged.