

March 13, 1963

Dissent from Killough Committee Report

I agree with the Killough Committee that the decision of the United States Court of Appeals for the District of Columbia Circuit in *Killough v. United States*, . . . U.S. App. D.C. . . . , . . . F.2d . . . (No. 16398, Oct. 4, 1962), represents only an application of the *McNabb-Mallory* rule and that the Committee should make no specific recommendation with respect to that case. As we said during our deliberations, *Killough* is a matter for "judicial evolution."

I respectfully dissent from all other recommendations of the Killough Committee.

The Committee has submitted three legislative proposals and has recommended that all three be *sponsored* by the Bar Association of the District of Columbia. The first two proposals urge drastic changes in criminal procedure in the District of Columbia—changes which may restrict rights guaranteed by the Constitution. One who sponsors such legislation has a heavy burden to prove both need and legality. I do not think that burden has been met. The third proposal—while less drastic—is not supported by a demonstration of need.

The three proposals will be discussed in order.

I. ANTI-MALLORY PROPOSAL

The first bill provides in essence that a confession shall not be inadmissible in evidence solely because it was obtained during a period of unnecessary delay between arrest and arraignment. This is an elaboration of the so-called Keating Bill and similar proposals which have been debated extensively for a number of years in the Judicial Conference, this Bar Association and Congress. The premise of this proposal seems to be that Rule 5(a) of the Federal Rules of Criminal Procedure has not been construed properly by the courts. It is an attempt to eliminate the *McNabb-Mallory* rule via legislation.

This is not the place for a detailed analysis of the *McNabb-Mallory-Killough* cases, but some brief reference appears in order.