

liberty of men such as Mallory, who have admitted their culpability, only to be released on legal technicalities, and providing them with the further opportunity to bring harm to society.

I would like to repeat that they are released on legal technicalities, legal theorists, and bleeding hearts without any regard to facts would turn these criminals loose on society to continue their career of crime.

A Nation, State, or jurisdiction basing its determination of an individual's guilt or innocence upon an overly lenient interpretation of a rule of criminal procedure is deserving of the description of being "soft on crime."

To provide a further example of the ridiculous extremes to which the *Mallory* rule has been extended, we need only consider the *Killough* case which departed substantially from previous decisions in application of the *Mallory* principle. Killough beat and strangled his wife and then carried the body after dark to the city dump where he hid it under a pile of rubbish. Five days later Killough told the police that his wife was missing. He then left town without keeping an appointment with police to give them more information. After 5 days, he returned home and the police questioned him about his missing wife for a full day without making a specific charge. At the end of the day he was booked and held. The following day he took police to the body and signed a confession to the murder. He was then charged and taken before a U.S. Commissioner for a hearing under rule 5(a). This procedure shows an obvious violation of rule 5(a) under *Mallory*. Accordingly, the judge had no other alternative but to exclude the written confession.

The following day, at the District jail and not in police custody, Killough reiterated the essentials of the crime to a police officer who came to receive instructions from Killough as to the disposition of his wife's body. The second confession was allowed in evidence as a voluntary statement made after Killough had been duly warned and advised of his rights under rule 5(a).

The majority of the court held in substance that the second confession, which was admitted in evidence, even though it was voluntarily made following the presentation of the defendant before a U.S. Commissioner, who advised him of his rights, was inadmissible in evidence under the theory that it was the fruit of the first confession and therefore was improperly admitted at the trial because the first confession had been given during a period of illegal detention.

In the course of its reasoning, the majority of the court made a comparison of the relationship between Killough and the receiver of his confession and the situation existing between parties possessing a confidential relationship and between whom there is a privileged communication such as a confession made to a clergyman or statements made in private to a doctor or lawyer. In commenting upon this comparison, the minority in its dissent likened the effort of the majority to equate Killough's confession made to a member of the clergy or statements to a doctor or lawyer as a "red herring." The suppression of the statement is not in any sense comparable to the common law or statutory privilege which leads to the exclusion of revelations of privileged communication to lawyer, doctor, or clergyman. This type of relationship simply does not exist between the police and accused persons.