had been sitting and to submit to a search outside. The court rejected the argument that the "arrest" took place only after the police officers had discovered the marijuana and, referring again with approval to the jury instructions given in the *Coleman* case, the court concluded (at p. 312):

"That the appellant was restricted of his liberty and so understood can hardly be doubted as he left the restaurant with one officer leading the way and the other alongside or behind the appellant."

The definition of arrest stated by the *Kelley* and *Coleman* decisions rests upon an earlier case which is frequently referred to as having established for the District of Columbia that an arrest occurs when there is a detention that amounts to a restraint on liberty. In *Long* v. *Ansell*, 69 F. 2d 386, 389 (D.C. Cir. 1934), the court declared:

"* * * the term 'arrest' may be applied to any case where a person is taken into custody or restrained of his full liberty, or where the detention of a person in custody is continued for even a short period of time" (see also *Morton* v. *United States*, 147 F. 2d 28, 30 (D.C. Cir. 1945); *Price* v. *United States*, 119 A. 2d 718 (Mun. Ct. App. 1956)).

All of this background, I believe, is necessary to a full understanding of what *Mallory* itself says. In *Mallory* v. *United States*, 354 U.S. 449, 453–454, the Supreme Court excluded a confession, admittedly otherwise voluntary, because of a violation of rule 5(a). In so doing, the Court made two significant observations:

"The requirement of rule 5(a) is part of the procedure devised by Congress for safeguarding individual rights without hampering effective and intelligent law enforcement. Provisions related to rule 5(a) contemplate a procedure that allows arresting officers little more leeway than the interval between arrest and the ordinary administrative steps required to bring a suspect before the nearest available magistrate."

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"The arrested person may, of course, be 'booked' by the police. But he is not to be taken to police headquarters in order to carry out a process of inquiry that lends itself, even if not so designed, to eliciting damaging statements to support the arrest and ultimately his guilt."

It is quite clear from a study of the cases cited by Deputy Attorney General Katzenbach that this is exactly what the police did—take a suspect to police headquarters, not solely for booking, but "to carry out a process of inquiry." In *Jones* v. *United States*, 307 F. 2d 397, 399 (D.C. Cir. 1962), the facts speak eloquently of what occurred:

"She was thereupon placed under arrest at approximately 4:25 a.m. on Sunday, July 3, 1960. After an additional hour of questioning the police returned appellant to the scene of the killing when, with her help, they found the weapon used, a knife. Thereupon, she was returned to homicide headquarters, where the questioning continued until about 8 a.m. when she signed a full confession claiming self-defense. She was not brought before the committing magistrate until the following day, Monday, July 4, at 9 a.m."

It is clear, merely from this recitation, that Jones was not taken to the station for "booking" or for "ordinary administrative steps." She was brought for questioning—a flagrant violation of *Mallory*. Under such circumstances, the time interval is insignificant; it is the conduct of the police within that interval which counts. The same is true in *Charles Coleman* v. *United States*, 313 F. 2d 576, 577 (D.C. Cir. 1962), *Tony Coleman* v. *United States*, 317 F. 2d 891, 893 (D.C. Cir. 1962) and *Muschette* v. *United States*, No. 17,410 (D.C. Cir. July 25, 1963). In each case, police officers took the accused to headquarters for the precise purpose of "carrying out a process of inquiry." This they may not do. It's just as simple as that. The fact that these are nighttime arrests is unimportant. A committing magistrate and an assistant U.S. Attorney are "available to the police 24 hours a day" (*Jones* v. *United States*, 307 F. 2d 397, 399 (D.C. Cir. 1962)). "This arrangement with the U.S. attorney and the municipal court has been in effect for several years" (id., footnote 6). The unmistakable conclusion is that the police have intentionally ignored these procedures, preferring instead, to take their chances on the admissibility of any statements thereby obtained.

I pointed out earlier that the *McNabb-Mallory* exclusionary rule is one of evidence. The obvious question, therefore, is whether the courts are justified in imposing such a rule as a means of enforcing proper police procedures (*Mallory* v. *United States*, 354 U.S. 449, 453). An excellent discussion is found in