

arrested when the police take him away with a subpoena. If an arrest is involved, it is unlawful without probable cause. If probable cause exists, the entire exercise is unnecessary. If it is *not* an "arrest" or "seizure," what is it?

One authority has said: "... [I]n most instances the [state] courts have not even discussed whether in-custody investigation by the police is legal." Barrett, *Police Practices and the Law—From Arrest to Release or Charge*, 50 Calif. L. Rev. 11, 22 (1962). We know that the courts of the District of Columbia will discuss the problem, and I think we should try to predict what they will say and do.

My prediction is that our courts will find there has been an arrest. See, for example, page 20 of Judge Youngdahl's opinion in *United States v. Smith and Bowden*, Criminal No. 324-62, U.S. District Court for the District of Columbia. I predict our Court of Appeals and the Supreme Court will also find there has been an arrest. See *Coleman v. United States*, 111 U.S. App. D.C. 210, 295 F. 2d 555 (1961).

The suggestion has been advanced that the presumption of constitutionality of a statute would be sufficient to tilt the scales in favor of constitutionality of the Six Hour Bill. I doubt that the presumption is sufficiently strong to overcome constitutional objections.

One suggestion has been made that an attempt could be made to adopt the Six Hour Bill on the basis that it involves a civil proceeding rather than a criminal one. There may be a dispositive analogy in the Fifth Amendment language that no person shall be required to testify against himself "in any criminal case." The courts said at an early date that the protection of the Amendment would be an empty gesture if it was literally applied. For this reason, courts long ago concluded that it must be given a comprehensive application, and thus must prevent compulsory incrimination in *any* proceeding. This is a broad construction of the constitutional language but perhaps it is required for accomplishment of the basic objective of that language.

The *Wong Sun* case, *supra*, is also pertinent to any consideration of the Six Hour Bill.