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Columbo Goes to Law School: Or, Some Thoughts on the Uses of Television in the Teaching of Law

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COLUMBO GOES TO LAW SCHOOL: OR, SOME THOUGHTS ON THE USES OF TELEVISION IN THE TEACHING OF LAW

*Christine Alice Corcos**

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I. INTRODUCTION

One of the latest trends in legal education is the use of popular films to teach selected legal concepts.¹ As faculty re-evaluate the case method

1. Film, television, and the law and literature movement attract law faculty who find the Socratic and case methods less than effective in some classroom settings. The legal literature re-evaluating traditional methods is vast. See, e.g., Scott J. Burnham, *The Hypothetical Case In the Classroom*, 37 J. LEGAL EDUC. 405 (1987); June Cicero, *Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education*, 15 WM. MITCHELL L. REV. 1011 (1989); E. Allan Farnsworth, *Casebooks and Scholarship: Confessions of an American Opinion Clipper*, 42 SW. L.J. 903 (1988); Rudolph J. Gerber, *Legal Education and Combat Preparedness*, 34 AM. J. JURIS. 61 (1989); Steven Hartwell & Sherry L. Hartwell, *Teaching Law: Some Things Socrates Did Not Try*, 40 J. LEGAL EDUC. 509 (1990); Suzanne Kurtz et al., *Problem-Based Learning: An Alternative Approach to Legal Education*, 13 DALHOUSIE L.J. 797 (1990); William Wesley Patton, *Opening Students' Eyes: Visual Learning Theory in the Socratic Classroom*, 15 LAW & PSYCHOL. REV. 1 (1991); Russell L. Weaver, *Langdell's Legacy: Living With the Case Method*, 36 VILL. L. REV. 517 (1991); and Mark G. Yudof, *Law School Life Beyond the Socratic Method: Curriculum Reform*, N.J. L.J., June 29, 1989, at 7. Eileen Cooper, *Legal Education In the Age of Technology*, 7 DEL. LAW. 6 (June 1989), is a discussion of the present state of technology applied to legal education. Finally, Steven Brill offers an evaluation of the educational uses of courtroom television broadcasts in *TV In the Courtroom: An Idea As Old As America*, 1 J. AM. BOARD TRIAL ADVOC. 101 (1991).

and its application in specific subject areas,² they also investigate pedagogical approaches borrowed from other disciplines.³ Some law schools now incorporate law and film courses into the curriculum. The number of professors who use film and television clips or refer to cinematic characters and situations to illustrate the law at work in society⁴ is rapidly increasing.⁵ Continuing Legal Education ("CLE") is another arena for video

For a cogent and intelligent discussion of the need for alternative methods of teaching the law, see Lee Stuesser, *The Need for Change in Teaching the Law*, 38 U. N.B. L.J. 55 (1989), in which the author suggests using video to teach constitutional law. In particular he mentions that "legal ethics could well be taught based upon 'L.A. Law' episodes." *Id.* at 72. The tendency can be overdone, of course. "You can show any movie and relate it to the law in some way." Robert A. Stein, *A Tribute To Irving Younger*, 73 MINN. L. REV. 815, 816 (1989) (quoting Irving Younger). But for a thoughtful analysis of the television program *L.A. Law*, see Steven P. Gillers, *Popular Legal Culture: Taking L.A. Law More Seriously*, 98 YALE L.J. 1607 (1989). In a recent article, Francis Nevins points out the uses that teachers can make of film and television to emphasize legal concepts and the public perception of the law in humanities courses. Francis M. Nevins, Jr., *Law, Lawyers & Justice in Popular Fiction & Film*, HUMAN. EDUC., May 1984, at 3.

2. See Charles Donahue, Jr., *A Legal Historian Looks at the Case Method*, 19 N. KY. L. REV. 17 (1991) (on legal history); Diane B. MacDonald, *Turning War Stories Into Case Studies*, 9 J. LEGAL STUD. EDUC. 437 (1991) (on business law); Andrew E. Taslitz, *Exorcising Langdell's Ghost: Structuring a Criminal Procedure Casebook For How Lawyers Really Think*, 43 HASTINGS L.J. 143 (1991) (on criminal procedure).

3. For example, the law and literature movement, which borrows heavily from literary theory; the critical legal studies movement, which borrows from literary theory, philosophy and other disciplines; and the many writings on legal history. See Don Peters, *Using Simulation Approaches In Large Enrollment Law Classes*, 6 J. PROF. LEGAL EDUC. 36 (1988) (game theory). Student legal clinics have been particularly active in exploring simulations and role playing to teach lawyering skills. See, e.g., Samuel R. Gross, *Clinical Realism: Simulated Hearings Based On Actual Events In Students' Lives*, 40 J. LEGAL EDUC. 321 (1990).

On the law and literature movement, see, for example, James Boyd White, *The Judicial Opinion and the Poem: Ways of Reading, Ways of Life*, 82 MICH. L. REV. 1669 (1984). But for a contrasting view, see generally RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* (1991).

4. Science fiction as a vehicle for exploring substantive law seems to have been neglected so far, but the author hopes to examine this possibility in a future article based on a prototype for the next phase of interactive media and live action teaching using television. The prototype would address an international human rights issue using an episode of *Star Trek: The Next Generation*.

5. In addition, many law teachers have embraced the use of video technology to teach or convey legal concepts in substantive, clinical, and legal research settings. See Paul R. Baier, *What Is the Use of a Law Book Without Pictures or Conversations?*, 34 J. LEGAL EDUC. 619 (1984); Paul Brest, *A First-Year Course in the "Lawyering Process"*, 32 J. LEGAL EDUC. 344 (1982) (video used in client counseling classes as part of final examination); Sally Douglas, *Tube Test Babies: Teaching Trial Skills Through Interactive Video*, 8 CAL. LAW. 26 (Dec. 1988); Morley R. Grossky, *A Modest Proposal for Videotaping Actual Cases as a Method of Advocacy Training*, 22 GAZETTE 82 (1988) (Can.); Andrew Hart, *In Video Veritas?* 17 LAW TCHR. 17 (Winter 1983); Mary Holmes & Judith Maxwell, *The Use of Role Play and Video in Teaching Communication*

integration.⁶ In addition, at least one law firm has used a Broadway production to enhance its associates' training.⁷

Educators generally choose films and plays emphasizing professional ethics and client counseling.⁸ Such dramas focus on either the legal system or on the attorney and his or her role in the drama. Therefore, they lend themselves to use in both professional responsibility courses and in studies of the justice system⁹ or alternative dispute resolution. By emphasizing the role of the lawyer and oversimplifying legal issues these dramas tend to distract the viewer from considering the questions of

Skills To Law Students, 5 J. PROF. LEGAL EDUC. 151 (1987); Vincent Robert Johnson, *The Video Essay Question: An Experiment in Teaching Professional Responsibility*, 50 MO. L. REV. 591 (1985); Ellen J. Miller, *Teaching With Video*, L.A. LAW., July 1983, at 42.

At Case Western Reserve Law School, as at other law schools, instructors teaching professional responsibility regularly use episodes from *L.A. Law*, *Law & Order*, and (when it was broadcast) *Hill Street Blues* to illustrate legal ethics issues. The Case Western Reserve Law School Library sponsored a "Bill of Rights Film Series" during the 1991/92 school year which featured talks by faculty members about legal issues raised in movies such as *INHERIT THE WIND*, *CARNAL KNOWLEDGE*, and *REVERSAL OF FORTUNE*.

6. CLE providers have been exploring the use of video technology for about ten years. See Arleen Stibelman, *It's Not 'L.A. Law,' But It's More Useful*, L.A. DAILY J., Dec. 21, 1988, at 7; Ellen J. Miller, *'Interactive' Video CLE For Lawyers in Florida: Program Starts in Fall*, NAT'L L.J., Aug. 29, 1988, at 17; Deborah S. Panella, *Using Videotapes in CLE Programs*, 12 LEGAL ECON. 49 (1986); Vicki Quade, *Tune In To CLE-TV . . . But Do It Right*, 8 BAR LEADER 12 (1983); Donald M. Maclay, *Technology and Continuing Legal Education: The Future Is Now*, 56 FLA. B.J. 247 (1982); Stanley M. Talcott, *Videotape and Continuing Legal Education*, 10 COLO. LAW. 1837 (1981); William H. Hamblin, *Two-Way Videoconferencing Arrives: ABA Experiment*, NAT'L L.J., July 27, 1981, at 19; Bill Winter, *Cable CLE Isn't Turning On the Bar*, 6 BAR LEADER 29 (1981); Ruth Marcus, *Money, Monitoring Problems Face Cable TV Experiment in Broadcasting CLE Seminars*, NAT'L L.J., Sept. 8, 1980, at 6.

7. David Margolick, *Lawyer's Theater Trip is a Real-World Lesson*, N.Y. TIMES, June 11, 1983, at 27.

8. A listing of films in each of these categories is beyond the scope of this Article. However, for a listing of many "law-related" films, see ROGER C. CRAMPTON, *AUDIOVISUAL MATERIALS ON PROFESSIONAL RESPONSIBILITY* (1987), a highly valuable guide which now needs updating; Paul J. Mastrangelo, *Lawyers and the Law: A Television Filmography*, 8 LEGAL REF. SERV. Q. 135 (1988); and Paul J. Mastrangelo, *Lawyers and the Law: A Filmography II*, 5 LEGAL REF. SERV. Q. 5 (1985). Note that hundreds of law-related films are now available on videocassette while few television shows are as available. However, an enterprising instructor could do exactly what the author has done with *Columbo* with many episodes of either currently broadcast or syndicated television series. Many of the films frequently found on lists of recommended professional responsibility videos could also offer the substantive law teacher opportunities to illustrate a legal issue effectively as well.

9. For example, *TWELVE ANGRY MEN* (United Artists 1957) and *THE WRONG MAN* (Warner Brothers 1956). *JUDGMENT AT NUREMBURG* (United Artists 1961) offers the spectacle of a new legal order being born.

substantive law.¹⁰ Therefore, most law teachers using films in class have not used them in a course such as criminal procedure or evidence.¹¹

The teaching of substantive law through film using a rapidly maturing video technology need not be outside the realm of possibility, however.¹² The rush to incorporate cinematic visions of lawyers into the law school curriculum has overlooked at least one television series which offers law teachers an opportunity to concentrate on substantive law.¹³

II. WHY *COLUMBO*?

A. *Columbo* As A Paradigm

Columbo is admirably suited for use as discussion material in criminal procedure classes for five reasons. First, *Columbo* represents the ideal

10. Note that many critiques of the image of the lawyer in film identify this tendency toward oversimplification as a contributing cause toward the public's distrust of the legal profession. See, e.g., M. Ethan Katsh, *Is Television Anti-Law?: An Inquiry Into the Relationship Between Law and Media*, 7 ALSA F. 26 (1983).

11. An exception is Norman Garland of Southwestern University School of Law, who uses a 15 minute clip from an episode of *Law and Order* in his class. He finds that it gets the student's attention if it's played at the beginning of the hour. Telephone Interview with Norman Garland, Professor, Southwestern University School of Law (Nov. 3, 1992).

12. For example, various manufacturers use enlarging and projecting lenses or liquid crystal displays to enlarge video and data images for use in a classroom setting. By using such wide screen projection units (also called video projectors or data projectors) hooked up to videocassette recorders (VCRs), instructors could create their own teaching tools made up of *Columbo* clips strung together. The copyright implications of this teaching method are beyond the scope of this Article. See *infra* note 27. Similarly, by also hooking up the projection unit to a computer, one could alternate between a *Columbo* clip and, for example, a computer exercise designed to lead students through an analysis of the action (e.g., one of the relevant CALI exercises produced by the Center for Computer Assisted Legal Instruction based at the University of Minnesota).

13. Among the 1990/91 television season shows available for use in the law school classroom are (besides the ubiquitous *L.A. Law*) *Equal Justice*, *Law and Order*, *Shannon's Deal*, *Matlock*, *The Trials of Rosie O'Neill*, and *Eddie Dodd* (based on the feature film TRUE BELIEVER (Columbia Pictures 1989)). However, except for *Equal Justice*, *Shannon's Deal* and *Law and Order*, these series rarely approximate an accurate presentation of the American legal system. Unfortunately, *Equal Justice* and *Shannon's Deal* were both canceled at the end of the season. Note that *Law and Order* would be a particularly good candidate for instructors wishing to integrate television episodes in the teaching of trial tactics, although the author is not aware of any instructor using the show in that way. *L.A. Law*, which was never particularly realistic, has gone hopelessly Hollywood with its portrayal of a law firm that handles divorces, rape trials, tax audits, and murder cases with equal fervor while its employees play musical beds. See Ken Tucker, 'L.A.' Lost, ENT. WKLY, Jan. 31, 1992, at 45. But for a contrasting view, see Anthony Monahan, *Who Puts the Law Into "L.A. Law?"*, 15 BARRISTER 8 (1988).

detective,¹⁴ the seeker of truth, rather than the bumbling or venal adversary often presented in "cop and lawyer" shows. Second, *Columbo's* writers emphasize the legal procedure as much as the morality of the characters. Third, the episodes function independently as case studies. Fourth, *Columbo's* actions carry official sanction and have legal consequences. Fifth, the episodes follow a specific pattern, namely the creation of a prosecutable case against a particular suspect.

From 1968 to 1978,¹⁵ and then from 1989 to the present,¹⁶ the sophisticated detective series *Columbo*, featuring an Italian-American member of the Los Angeles police force, includes interesting legal situations, clever plotting, unusual characters, and high quality production.¹⁷ Each episode documents the exploits of the appealingly eager and committed Lieutenant *Columbo* of the Los Angeles Police Department who, with battered car and ancient raincoat, loyal (though listless) dog and worldwide reputation, does battle regularly with a clever killer. *Columbo's* adventures present the law teacher with the chance to enliven the introductory course or seminar with visual reminders of both black letter law and stimulating hypothetical situations.

To encourage innovation in the teaching of substantive law courses, this article analyzes some of the legal issues explicit or implicit in *Columbo* episodes and makes suggestions for the effective use of the series as a teaching tool in the law school curriculum. At the same time, *Columbo* can sensitize students to the image of the American justice system currently being presented to the general public. While no film or television series

14. The *Columbo* formula combines the best of the classic written detective story and the traditional written police procedural by carefully presenting to the viewer the clues needed to discern the identity of the guilty party and allowing the viewer to monitor police actions. For early examples of the classic detective story, see Richard A. Freeman's *THE SINGING BONE* (1912) and the works of Agatha Christie, particularly *THE MURDER OF ROGER ACKROYD* (1926) and *MURDER ON THE ORIENT EXPRESS* (1934).

15. *Columbo* is currently in syndication in many markets in the United States. Faculty planning to use episodes in class should consider calling the local station which airs the episodes and asking how they plan the programming. Stations which purchase syndication packages have little say in the particular episodes available for airing, while stations which have occasional use for syndicated series are more likely to be in a position to choose which episodes to show on particular days and times. Telephone Interview with Kathy Hilbert, Programming Assistant, Channel 19 (WOIO), Cleveland, Ohio (Feb. 3, 1992).

16. The challenge will continue; ABC has ordered at least eight episodes for the 1991/92 and 1992/93 television seasons. See Aleene MacMinn, *Morning Report: Television*, L.A. TIMES, May 14, 1991, at F2.

17. Writer-producers Richard Levinson and William Link created and oversaw the series, which was produced at Universal Studios and aired on NBC. See RICHARD LEVINSON & WILLIAM LINK, *STAY TUNED* (1981) for a history of the development of *Columbo*.

can replace the intensive study of law available in the law school classroom, hypotheticals based on pre-assigned readings and selected scenes in the episodes would encourage students to apply legal concepts entertainingly and memorably.¹⁸ The episodes offer ready-made fact situations for the instructor without the time or the inclination to make up intricate hypotheticals and yet allow speculation about the ultimate outcome of the case. Because the stories are so entertaining and can easily hold student attention, *Columbo* suits many different teaching methods, from the Socratic to the seminar-style discussion.

Each episode features manslaughter or murder, a cover-up, and sometimes other violent crimes occurring, or assumed to have occurred. However, the focus is always on the procedure Columbo employs to discover the identity of the murderer.¹⁹ As a result, the *Columbo* series offers opportunities for law students to review the Fourth, Fifth, and Sixth Amendments as well the elements of specific crimes,²⁰ the elements of police procedure, and the rules of evidence. While throughout the text and footnotes the author suggests a few of the questions that an instructor can pose to students watching the films, the specialist in criminal procedure will certainly think of many others. Further issues for discussion may include professional responsibility and the role of lawyers in society, as well as public perceptions of the extent and protection of individual rights in American society. Examination of particular scenes also allows for

18. The *Columbo* episodes lend themselves most obviously to use in criminal law and procedure classes, and perhaps classes in trial tactics. However, many episodes also bring up other issues, some of which are discussed in an expanded version of this Article available from the author. These include, for example, the elements of particular offenses, police procedure, and legal ethics.

19. The elimination of extraneous activities and scenes also allows students to direct their attention to the legal issues presented in the episodes.

20. Many episodes are distressingly full of all kinds of wrongdoing, not just murder. Students could spend an entertaining class period playing "spot the crime" and listing the elements as they appear in the episode. Thus, any *Columbo* episode provides grist for the criminal law and procedure mill. For example, the episode *Requiem for a Falling Star* (NBC television broadcast, Jan. 21, 1973) covers the following crimes committed by different characters: manslaughter, failure to report a death to the police, accessory after the fact to manslaughter, illegal burial, fraud, blackmail, arson, murder, and attempted murder. *Fade In to Murder* (NBC television broadcast, Oct. 10, 1976) includes: blackmail, desertion from the armed forces in time of war, tax evasion, assault and battery, theft, and murder. *Rest In Peace, Mrs. Columbo* (ABC television broadcast, Mar. 31, 1990) includes: second degree murder, first degree murder, attempted murder (two counts), blackmail, gambling, bribery, and the unauthorized use of an ATM card.

discussion of trial tactics and case development for budding attorneys.²¹ In addition, because the screenwriters generally follow Monsignor Knox's "Ten Commandments of Detection,"²² the viewer is usually in possession of all evidence necessary to trap the murderer. Thus, law students can exercise their powers of observation and deduction along with Columbo.

B. America's Discovery of Columbo

The rumpled lieutenant officially dates from February 20, 1968, when he appeared in a two hour TV movie called *Prescription: Murder*.²³ He disappeared from view temporarily in 1978, after 43 regular series episodes.²⁴ Counting the two pilot films, *Prescription: Murder*²⁵ and

21. As a side issue, law students can also study the evolution of public attitudes and perceptions of the legal system. For example, they can learn that as early as 1968, the year *Prescription: Murder* (NBC television broadcast, Feb. 20, 1968) was aired, viewers had at least a vague understanding of the meaning of *Miranda v. Arizona*, 384 U.S. 436 (1966). The mention of search warrants in many of the episodes indicates that the writers recognize that the public knows warrants are usually necessary and form part of "accepted" police practice, although they may not know exactly why warrantless searches are *per se* illegal if they do not fall within certain exceptions. The leading case is *Katz v. United States*, 389 U.S. 347 (1967). Note that although warrantless searches do occur in some episodes, as discussed *infra*, the viewer has to infer the lack of a warrant from the scenes. Also, warrantless searches dropped in frequency as the seasons progressed. Either the lieutenant or the writers figured out the "poisonous tree" doctrine, although again the viewer has to draw this inference, since when Columbo mentions obtaining a warrant, he does not explain why he thinks he needs one. By 1991, in *Columbo and the Murder of a Rock Star* (ABC television broadcast, Apr. 29, 1991), Columbo goes to the pains of obtaining a warrant to search *the outside of a car*. As courts continue to carve out exceptions to the warrant requirement, however, students can examine each warrant situation in light of the new decisions.

22. Ronald A. Knox, *A Detective Story Decalogue*, in *THE ART OF THE MYSTERY STORY* 194 (Howard Haycraft ed., 1946). The "rules" of the classic detective story include "fair play," which means: the actual criminal must be introduced early in the story, the detective is not the criminal and the correct solution to the puzzle must not encompass the supernatural or coincidence. *Id.*

23. NBC television broadcast, Feb. 20, 1968; MARK DAWIDZIAK, *THE COLUMBO PHILE: A CASEBOOK* 13 (1989) [hereinafter *COLUMBO PHILE*]. The character of Columbo actually dates from a short story written by Richard Levinson and William Link, published by ALFRED HITCHCOCK'S *MYSTERY MAGAZINE* as *Dear Corpus Delecti*, in which he manifests himself solely as a knock on the door at the end of the story. *COLUMBO PHILE*, *supra*, at 20. Later, the writers adapted the story for a one hour episode in NBC's *The Chevy Mystery Show*, renaming it *Enough Rope*. *Id.* Eventually, Levinson and Link expanded the playlet into a full length Broadway show; it underwent another name change, emerging as *Prescription: Murder*. *Id.* at 21.

24. There were 43 *TV Movies of the Week* and two pilot films. As of this writing, only the pilot film *Prescription: Murder* and the episode *Murder By the Book* are available on videocassette. *TV MOVIES AND VIDEO GUIDE* 834 (Leonard Maltin ed., 1989); MICK MARTIN & MARSHA PORTER, *VIDEO MOVIE GUIDE* 1990, 37 (1990). Perhaps the publication of this Article will induce the copyright holder to release the other episodes on videocassette for the

Ransom for a Dead Man,²⁶ Columbo's appearances were remarkably few for such an influential figure.²⁷ *Columbo* reruns have been popular in independent markets since the series went off the air after ten successful seasons. A triumphant Columbo made his reappearance during the 1989-90 broadcast season with the same car and the same raincoat. When Columbo reappears, he seems to have learned much more about criminal law and procedure, a fact which invites speculation about increased viewer awareness of developments in constitutional law. He is more obviously sensitive and apologetic in the later series of episodes to the charges of harassment that his suspects continually make. He is also more likely to get a warrant when searching for evidence. In the event that he actually arrests the killer on camera, he often gives the suspect *Miranda* warnings.²⁸ However, some of Columbo's actions might still jeopardize a successful prosecution, and these are the actions of most interest and use to the law teacher. While this aspect of the *Columbo* series is one of the most far-fetched and disturbing for lawyers, it offers many opportunities for future prosecutors and criminal defense attorneys to discuss the possible outcomes of a trial in a way that lawyer shows such as *Matlock* and *Perry Mason* do not.²⁹ In addition, law teachers might wish to discuss Colum-

edification of lawyers and laypersons everywhere.

25. NBC television broadcast, Feb. 20, 1968.

26. NBC television broadcast, Mar. 1, 1971.

27. Columbo's exploits are known from the Mideast to China. See Aryeh Dean Cohen, *Agony Over Laughs*, JERUSALEM POST, May 3, 1991, Features; and Richard W. Stevenson, *Film's Far East Connection*, N.Y. TIMES, Dec. 27, 1987, § 3, at 5. See also Frank Sanello, *Columbo's World: It's a Mystery to Peter Falk How His Detective Captured the Globe*, CHI. TRIB., Apr. 2, 1989, at C1.

28. Although, naturally, he volunteers no legal advice. His stock in trade, in fact, is to seem so bumbling that suspects and witnesses routinely talk too much, rather than too little. Very few suspects actually call their lawyers in the Columbic universe, although nearly all threaten to do so. Clearly the writers of each *Columbo* episode are aware that the public expects some compliance with the law; however, they may fear that too much attention to the detail that fascinates lawyers will leave them viewerless. In general, the suspects "go quietly" and voluntarily. Students might profitably discuss whether this scenario is ever realistic.

29. Note that "courtroom" shows often depend on the ability of the protagonist lawyer to unmask the real culprit for the resolution of their plots (the "Perry Mason" syndrome, which is usually preceded by much screaming, ranting, and finger-pointing). Apart from the fantasy inherent in the show's premise that Mason's clients are *always* innocent, Mason's success depends in large part on his investigative talents, not on his knowledge of the law. While we do not turn primarily to television or film for a realistic depiction of attorney behavior, most attorneys are not known for their Holmesian gifts (that's Sherlock, not Oliver Wendell, Jr.). On Perry Mason's courtroom style, see Anita Sokolsky, *The Case of the Juridical Junkie: Perry Mason and the Dilemma of Confession*, 2 YALE J.L. & HUMAN. 189 (1990) and Eve P. Greene, *Masonic Jurisprudence*, 32 PRAC. LAW. 69 (1986).

bo's behavior as a policeman with the class, questioning how authentic it is, and perhaps inviting in a real-life "Columbo" to discuss police procedure and attitudes with the students.

There are alternatives to *Columbo*. Among other currently airing television shows, *Law and Order* seems promising as a vehicle for stimulating discussion in law school classes. Its emphasis on discussion of procedural issues and trial tactics gives students sufficient material to carry on a lively debate.³⁰ One of *Law and Order's* most appealing features is its use of current cases in its storylines.³¹ Another possibility may be the domestic relations drama *Civil Wars*, which emphasizes the activities of a law firm specializing in divorce, child custody, and probate issues.³²

C. *Columbo* As A Law Teacher

Any *Columbo* episode illustrates the Fourth and/or Fifth Amendments at work at some point during the show. Some episodes also document the elements of specific crimes, such as murder or manslaughter. The remainder of this Article deals with the possible use of various scenes from *Columbo* episodes to illustrate Fourth, Fifth and Sixth Amendment issues of criminal law and procedure.³³

For any episode, the instructor's pre-viewing analysis of relevant cases and statutes is essential, since it will help guide the discussion and enable students to spot constitutional issues. Careful planning, including scanning

30. Norman Garland views *Law and Order* as "the most realistic and accurate portrayal of legal principles and courtroom scenes They rarely do anything that's a mistake." Deborah Hastings, *Respect vs Renown: Jury of Public Opinion Still Out on "Law and Order,"* CHI. TRIB., Feb. 5, 1992, at C5.

31. Episodes from the 1991/92 season highlighted the *Arizona v. Fulminante* case, 111 S. Ct. 1246 (1991). In a recent New York Times article, John O'Connor suggests that *Law and Order* is the beginning of a trend toward more realistic—and cynical—shows, pointing to new arrivals such as *Crime and Punishment* and *Homicide*. John J. O'Connor, *Critic's Notebook: Playing the Games of TV's Cops and Robbers in a New Climate of Cynicism*, N.Y. TIMES, Mar. 2, 1993, at C13.

32. Many instructors already use the television show *L.A. Law* for ethics questions. While that particular series also presents legal issues, its somewhat unrealistic portrayal of a firm engaged in a wide range of legal issues also tends to mix in dilemmas concerning the characters' personal lives worthy of a daytime drama. Entertaining as that mixture may be, it may distract students from the primary purpose of using film and television in substantive law school classes, which is to illustrate and stimulate discussion of legal issues.

33. The examples of each issue have necessarily been limited. However, it is hoped that this Article makes clear that scenes from many episodes could be used to illustrate particular points.

of television viewing guides, can allow faculty to tape particular *Columbo* episodes.³⁴

Using the scenes in various episodes as springboards for commentary and critique, or for role-playing by using the topics suggested for class discussion, also allows the instructor flexibility in the use and emphasis given to *Columbo*.³⁵ One method might be to have the class view an entire episode and discuss all the legal issues touched upon, in an effort to train students to view a client's problem in totality (the "total client" approach). Another approach might be to show related clips from various *Columbo* episodes to emphasize the treatment of a specific legal issue, and stimulate analysis and discussion by posing appropriate questions and hypotheticals.³⁶ Other approaches include: 1) the use of *Columbo* clips in class rather than selections from the casebook to initiate Socratic discussion

34. While the permissible use of off-the-air taping is still a murky area of law, faculty should familiarize themselves with the sections of the Copyright Act governing the use of videotape, 17 U.S.C. § 107 (1991) (fair use) and 17 U.S.C. § 110 (1991) (exceptions for educational use of off-the-air videotapes, including the "face-to-face teaching exception") and review the *Guidelines For Off-Air Taping of Copyrighted Works For Educational Use*, 127 CONG. REC. 24048 (1981). Generally, these guidelines provide for off-the-air taping only at the specific request of a teacher and allow retention of the taped program for 45 days. However, except for off-the-air taping for home (private) use, the question of off-the-air taping has not yet been litigated. See *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984) (specifically reserving the question of non-home off-the-air taping).

By and large, law faculty seem to make use of film rather than television clips because of the greater availability of films on videocassette and the copyright problems associated with off-the-air videotaping and playback of television shows. See also Steven H. Elizer, *Videotaping For Classroom Use: Fair Or Foul?*, 61 WASH. U. L.Q. 435 (1983); Natasha Roit, *Videotaping of Copyrighted Works For Temporary Classroom Use*, 5 LOY. L.A. ENT. L.J. 165 (1985); Ancil G. Ramey, *Off-the-Air Educational Videorecording and Fair Use: Achieving a Delicate Balance*, 10 J.C. & U.L. 341 (1983); *Damages Awarded For Off-Air Taping of Educational Films*, N.J. L.J., June 30, 1983, at 11.

Some educational uses are already under fire. See William A. Davis, *MTV vs. the Professor; Music Service Challenges UMass Teacher's Use of Videos To Dissect Sexism*, BOSTON GLOBE, May 17, 1991, Living, at 29 (MTV objection to faculty use of off-the-air taping in popular culture class). Note also that according to the *Guidelines for Off-Air Recording of Broadcast Programming For Educational Purposes*, *supra*, if faculty wish a third party (for example, law library staff) to tape *Columbo* episodes or any other television broadcast, each episode must apparently be requested individually. A third party cannot anticipate such a request, or automatically tape each episode as it is aired.

35. A guide to the various *Columbo* episodes, including original air dates and a synopsis of the plots, is available from the author.

36. The footnotes suggest relevant cases or statutes for each issue based on a survey of the literature. To keep the Article to a reasonable length, no attempt has been made to cover entire topics exhaustively. However, instructors will obviously have favorite sources for class reading and discussion.

about particular legal issues, once the students have been exposed to the relevant cases and statutes;³⁷ 2) using a series of *Columbo* clips for end-of-semester review for a class in criminal law or criminal procedure;³⁸ and 3) using *Columbo* material for examination purposes.

III. COLUMBO AND THE FOURTH AMENDMENT³⁹

A. The Search Warrant

One obvious area in which *Columbo* can function as a teaching tool is in the study of the requirements for and specific exceptions to the warrant requirement of the Fourth Amendment.⁴⁰ The careful juxtaposi-

37. Video technology, such as the newly introduced data projection machines, allows the instructor to run clips in class as discussion progresses. Thus, showing students a carefully structured series of *Miranda* warnings or searches and seizures from various episodes, then asking them to determine principles of law from the clips, would combine the exercise of pulling law from both visual materials and the traditional, dry, oral or printed hypothetical. It's also more fun. Ideally, students will have seen the clips at least once outside of class, and will have absorbed the facts, so that in-class discussion can focus on the issues. However, the instructor must be careful not to run afoul of the copyright laws.

38. For example, put a 30 minute tape of clips on class reserve for several days prior to the review session and ask students to view it once or twice before the review session. Then show it again during the session, asking the students to take notes. Finally, initiate discussion by posing a relevant question: Should a suspect's confession be admitted at trial? Was the *Miranda* warning sufficient? Did *Columbo* need a warrant in each of the scenes we viewed? Asking students to play the roles of prosecutor, defense attorney and judge allows them to bring up relevant arguments just as they would in answering an examination question. Since the questions are open-ended, the students do not know the outcome ahead of time, as they do when reading a case from the casebook. The review session allows them to mimic an actual situation and "play lawyer."

39. The literature on the Fourth Amendment is vast, but a classic work is WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT (2d ed. 1987) [hereinafter LAFAVE, SEARCH AND SEIZURE].

40. Obvious reading material for this section includes the Fourth Amendment itself and such key cases as *Terry v. Ohio*, 392 U.S. 1 (1967); *Mapp v. Ohio*, 367 U.S. 643 (1964); *Katz v. United States*, 389 U.S. 347 (1967); and *Warden v. Hayden*, 387 U.S. 294 (1967). Scenes from *Columbo* episodes are helpful in demonstrating the various exceptions to the warrant requirement such as the *hot pursuit* doctrine, the *search incident to a lawful arrest*, the *automobile exception*, the *stop and frisk exception*, *consent searches*, *plain view searches*, *evanescent evidence* and *body searches*, *administrative searches*, and *electronic surveillance exception*. Various *Columbo* episodes illustrating some of these doctrines will be discussed *infra*. A good general overview of the changes in the Supreme Court's approach to warrantless searches appears in Lewis R. Katz, *United States v. Ross: Evolving Standards For Warrantless Searches*, 74 J. CRIM. L. &

tion of scenes from various episodes can illustrate the varying circumstances under which a search warrant is necessary. Like many law enforcement personnel and most law students, Columbo does not always seem to understand the warrant requirement, which has no consequences in the Columbic universe, but leads to costs in the real world.⁴¹

Predictably, Columbo's approach to obtaining a search warrant is erratic. He seems to apply for one only shortly before he is ready to make an arrest; this may be because he is usually operating on "hunches" until then.⁴² A good general discussion question for students examining any episode would be to identify the earliest point in an episode at which they think a judge would issue a search warrant, and to explain why.

1. When Columbo's Suspicions Are Warranted

In some episodes, Columbo or another police officer obtains a search warrant. As a classroom exercise, students should discuss what evidence Columbo could present to a judge to justify the request for a search warrant

CRIMINOLOGY 172 (1983).

41. On the subject of "lost arrests" and the societal costs of lack of understanding of the exclusionary rule, see Peter F. Nardulli, *The Societal Costs of the Exclusionary Rule Revisited*, 1987 U. ILL. L. REV. 223 (1987), a follow-up to his *The Societal Cost of the Exclusionary Rule: An Empirical Assessment*, 1983 AM. B. FOUND. RES. J. 585 (1983). See also Joseph L. Daly, *Cost-Benefit Analysis In Search and Seizure Rulings*, 70 A.B.A. J. 110 (Nov. 1984); James D. Cameron & Richard Lustiger, *The Exclusionary Rule: A Cost-Benefit Analysis*, 101 F.R.D. 109 (1984); Thomas Y. Davies, *A Hard Look at What We Know (and Still Need To Learn) About the "Costs" of the Exclusionary Rule: The NIJ Study and Other Studies of "Lost" Arrests*, 1983 AM. B. FOUND. RES. J. 611 (1983).

42. By allowing the good detective to play fast and loose with the constitutional requirements for warrantless searches in the first series of episodes, the *Columbo* writers abandon an opportunity to teach the public about its rights to refuse a premises search and the admissibility of warrantless search evidence. It would be relatively easy to show Columbo getting a search warrant, or drop in a line or two indicating that he has one, thus informing the public that, without one, many cases get thrown out of court, and that these dismissals are the fault of overconfident or sloppy police work. The drama itself does not require that Columbo fail to get a search warrant; the presence or absence of a warrant is immaterial to the story. It is, however, crucial to a successful prosecution. Again, the failure to show Columbo in search of a warrant reinforces the public's impression that the "bad guys get caught" only through Columbo's cleverness in reconstructing the crime. Emphasizing the solution to the puzzle at the risk of misrepresenting the importance of careful and constitutional police behavior gives the viewer the impression that even conscientious police officers either do not understand or do not care about the warrant requirement, and leads to further viewer frustration about the state of the criminal justice system. On perceived fatalism or cynicism about the American legal system, see Katsh, *supra* note 10.

in each case. How should the judge rule?⁴³ Other scenes demonstrate the improper use of a search warrant. In these cases, although an officer obtains the warrant, Columbo knows or has reason to suspect that the grant of the warrant was based on falsified evidence. Finally, some episodes show Columbo conducting warrantless searches, seizures or arrests.

In *Blueprint for Murder*,⁴⁴ the killer is so clever that no evidence of foul play exists at the beginning of the investigation, yet Columbo responds to a missing persons report filed by the victim's ex-wife.⁴⁵ In order to obtain evidence of the killer's guilt, Columbo seeks to dig up part of a construction site where he believes the killer might have buried the body. An amusing scene shows Columbo going through the intricate procedures necessary to get the city's permission, as well as a warrant, to dig up piles on the construction site.⁴⁶ As a discussion question, students might

43. Generally, the requirements that a "neutral and detached magistrate" make a finding of "probable cause" based on the evidence presented by an investigating officer or prosecutor make a search warrant relatively easy to obtain. See *Johnson v. United States*, 412 U.S. 218 (1973); CHARLES H. WHITEBREAD & CHRISTOPHER SLOBOGIN, *CRIMINAL PROCEDURE: AN ANALYSIS OF CASES AND CONCEPTS* 144 (2d ed. 1986) [hereinafter WHITEBREAD & SLOBOGIN] (on the search warrant and probable cause requirements). While Columbo claims to operate on hunches and on "little things that bother" him, those little things added together may constitute probable cause to obtain a search warrant. Lacking a voluntary confession from the murderer, does Columbo run the risk in every episode of losing the case in court because he does not have probable cause to suspect the killer and therefore cannot obtain a warrant to seize the evidence? Contrast the strength of cases such as the one against Adrian Carsini (*Any Old Port In a Storm* (NBC television broadcast, Oct. 7, 1973)) or Nora Chandler (*Requiem For a Falling Star* (NBC television broadcast, Jan. 21, 1973)), in which Columbo obtains a confession, with the strength of his cases against Wade Anders (*Caution: Murder Can Be Hazardous To Your Health* (ABC television broadcast, Feb. 20, 1991)) or the criminal attorney (in all senses) in *Agenda For Murder* (ABC television broadcast, Feb. 10, 1990) (no confession).

44. NBC television broadcast, Feb. 9, 1972.

45. At one point, the ex-wife falsifies evidence in order to persuade Columbo that the victim has been murdered. Columbo's response is that "there's no harm done." Generally, he seems unwilling to pursue cases of interference with his investigation. See *Murder, Smoke and Shadows* (ABC television broadcast, Feb. 27, 1989), in which an actor playing a security guard prevents Columbo from following two actresses the killer has hired to pretend to be witnesses. While Columbo is annoyed, he takes no action against the "guard." When is interference with a police investigation worth the trouble of filing charges? Viewers get another insight into the Columbic code of honor when Columbo confides to a criminology class in *Columbo Goes To College* (ABC television broadcast, Dec. 9, 1990) that if he is certain of the killer's identity: "[t]here's very little I wouldn't do" to solve the case.

46. Ironically, the warrant is granted to search for a body which isn't there, although neither Columbo nor the viewer knows this fact. (Note the similarity with *Columbo Cries Wolf* (ABC television broadcast, Jan. 20, 1990). After the search is over the killer transports the body in the trunk of his car to the construction site to hide it in the hole for the new pile. His car blows a tire on a darkened mountain road and a traffic cop stops to help him change the tire. This, in

consider what kind of evidence Columbo presumably would have to present in order to obtain the warrant.

Columbo again obtains a search warrant for the person of Dr. Barry Mayfield and the surrounding premises (an operating room) in *A Stitch in Crime*.⁴⁷ Columbo's only ground for suspicion of Dr. Mayfield is the possibility that the suture, which Mayfield has previously used during an operation and which he now plans to remove, is in fact dissolving suture, not permanent suture. As Mayfield points out to him earlier in the episode, "you've got everything except proof." What evidence is Columbo likely to have collected to persuade a magistrate to issue the warrant?⁴⁸

In the event that Columbo has a search warrant, he may or may not produce it immediately. In *An Exercise in Fatality*,⁴⁹ Columbo returns to the offices of Milo Janus, the physical fitness guru and murderer, intending to obtain the tapes with which Janus staged a telephone conversation with his victim, thus providing himself with an alibi. Only when Janus challenges his presence does Columbo yank a warrant from his coat pocket and assure the suspect, "oh, I have a warrant for this." Should Columbo have presented the warrant immediately when Janus entered the room and requested an explanation for his presence? Should Janus need to ask for an explanation of Columbo's presence? Contrast Columbo's behavior in this scene with his confrontation of the killers in *Identity Crisis*⁵⁰ and *Agenda For Murder*.⁵¹ In *Identity Crisis*,⁵² he slaps the warrants down on

itself, is an unusual circumstance. Is the officer following the killer? The murderer declines help, saying his spare tire is not in the trunk. Should the officer be suspicious? Suppose Columbo had alerted all patrol cars in the area to be on the lookout for the killer's car. Would the killer's refusal to accept the officer's help be sufficient cause for the officer to search the car or trunk for the body? After the unsuccessful search of the construction site, would Columbo or an officer under his direction have reasonable suspicion to search the car? Or would this be an unreasonable search? Could Columbo follow the killer? Or would this behavior be considered harassment?

47. NBC television broadcast, Feb. 11, 1973.

48. The instructor should remind students, if they haven't seen the entire episode, that Columbo has come across a note in the victim's handwriting indicating that she planned to talk to a chemist about the composition of the suture. Is this enough to justify a warrant?

Note also that the doctor palms the dissolving suture during the operation, later neatly depositing it in the pocket of Columbo's surgical gown during the search. Columbo leaves the gown in Mayfield's office, then returns and retrieves it. Could a defense attorney challenge the admissibility of the suture, based on the possibility that someone other than Mayfield could have placed it in the pocket after Columbo left the operating room? Does this explanation pass the laugh test, given the dearth of other suspects?

49. NBC television broadcast, Sept. 15, 1974.

50. NBC television broadcast, Nov. 2, 1975.

51. ABC television broadcast, Feb. 10, 1990.

52. NBC television broadcast, Nov. 2, 1975.

the desk before questioning the killer and in *Agenda For Murder*,⁵³ where the suspect is an attorney, he presents the warrant immediately.

2. The Illegally Obtained Warrant

In some episodes, Columbo refuses to suborn the unethical or illegal request for a search warrant.⁵⁴ In *Suitable for Framing*,⁵⁵ Columbo refuses to request a warrant to search another suspect's house, since he is absolutely certain he knows the identity of the killer, Dale Kingston. Kingston induces the family attorney to convince the district attorney to seek a warrant to search the premises, since Kingston has planted there evidence incriminating another.⁵⁶

In *A Friend in Deed*,⁵⁷ the killer, Deputy Commissioner of Police Halperin, orders Columbo to accompany him to search the premises of the Deputy Commissioner's chosen suspect, Artie Jessup. Columbo urges him not to proceed with the search. When Halperin insists, Columbo points out that they had better get a warrant. "*I've already got one,*" Halperin announces and flourishes it. As it happens, Columbo has planted the fictitious information on which Halperin based his request for the warrant, although it does not seem that Columbo actually wanted that result. At the time that he sought the warrant (for burglary, not for murder), Halperin intended to plant evidence at the scene. Planting the evidence was not in

53. ABC television broadcast, Feb. 10, 1990.

54. See, e.g., *Suitable For Framing* (NBC television broadcast, Nov. 17, 1971); *The Greenhouse Jungle* (NBC television broadcast, Oct. 15, 1972). In neither episode does the lieutenant believe the targeted suspect is the killer. Compare these with *A Friend in Deed* (NBC television broadcast, May 5, 1974), in which he actually induces the killer to plant evidence before the preferred (but innocent) suspect can be arrested.

55. NBC television broadcast, Nov. 17, 1971.

56. Columbo does, however, search the grounds and the trash cans; his officers find the murder weapon in a field nearby where the killer has planted it. *Suitable for Framing* (NBC television broadcast, Nov. 17, 1971), like *Columbo Goes To the Guillotine* (ABC television broadcast, Sept. 16, 1989) and *Columbo Goes To College* (ABC television broadcast, Dec. 9, 1990) has a suitably ironic ending. Columbo traps the killer by creating a situation in which a condition exists which would not exist if the killer were telling the truth. In this case, he touches the evidence (paintings) while they are in Kingston's possession and before Kingston can plant them in another suspect's home. When Columbo's fingerprints are discovered on the paintings that Kingston claims were stolen by a third party, Kingston has lost the final battle of wits. In regard to the actions of the family attorney, note Kingston's argument: the attorney should encourage the D.A. to issue the warrant since a search of the premises will "protect" his client by showing the police that she has nothing to hide. Should an attorney actually buy this argument without wondering about a possible hidden motive on Kingston's part?

57. NBC television broadcast, May 5, 1974.

Columbo's mind until he identified the likely burglar as Jessup, whom he then contacted in an effort to blackmail Halperin and his accomplice Caldwell.⁵⁸ What is Columbo's responsibility to oppose Halperin's request for a search warrant, knowing it is based on the incorrect or fraudulent information that he himself supplied? Should the fact that Halperin genuinely believes the apartment belongs to Jessup make a difference?

B. Exceptions to the Warrant Requirement

1. Warrantless Searches of Nonpublic Areas

Columbo's search for evidence often takes him from a crime scene to the residence or office of a suspect or witness. Lacking a warrant, he charms or bumbles his way into a private home where he proceeds to search for clues. In some cases Columbo clearly violates the Fourth Amendment prohibition against warrantless searches. Even when dealing with the suspect he believes to be guilty, he does not always bother to get a warrant to search for evidence. To practice application of the exclusionary rule, students could postulate various situations where Columbo enters the premises without a search warrant and is still able to use any crucial evidence that is discovered. These situations include: 1) the suspect's refusal to consent to the search; 2) the suspect's ignorance of the search; 3) third-party consent to or silence as to the search; 4) the suspect's consent to a search of a restricted area; 5) the existence of probable cause justifying a warrantless search; and 6) warrantless searches incident to arrest.

For example, two scenes in *The Greenhouse Jungle*⁵⁹ serve as a good refresher for criminal procedure students. Columbo enters the premises of

58. Students should understand that Jessup is not guilty of blackmail, since he is cooperating with Columbo in trapping the suspects; he does not have the *mens rea* to commit the crime. However, they should also consider whether Columbo has entrapped Halperin, since no real evidence exists that Halperin would have planted the evidence if Columbo had not provided him with Jessup's false address. On the other hand, Halperin has already indicated that he hopes to frame the burglar responsible for other area break-ins (Jessup) for the murders. See *infra* part III.B.

59. NBC television broadcast, Oct. 15, 1972.

killer Jarvis Goodland without permission and without a search warrant⁶⁰ in order to search for a bullet that would confirm the identification of the murder weapon.⁶¹ He ignores Goodland's repeated question, "*what are you doing here?*" Even though another officer later brings him the warrant, since Columbo did not have permission to search at the time of the entry and discovery of the bullet, is the bullet admissible at trial? In the obligatory final scene Columbo explains that the suspect will have a difficult time explaining how the bullet from his conservatory is from the murder weapon. Apart from the fact that a good defense attorney can probably keep this bullet out of evidence, what is to prevent Goodland from asserting (truthfully) that the bullet was fired some time ago and that later, he gave the gun to someone else? In the previous scene, Columbo's overanxious sergeant and his men have been searching the victim's home for the murder weapon, having already obtained a warrant. If he fails to get a confession from Goodland, what does Columbo hope to prove with the illegally obtained bullet which he finds imbedded in the dirt floor of the conservatory? What objections would a defense attorney raise to the introduction of the bullet? What justifications would a district attorney advance? How should the judge rule?⁶²

60. Columbo is not searching the conservatory incident to an arrest since the arrest does not take place until after he finds the bullet. Although his sergeant is searching the home of another suspect, the victim's wife, that officer clearly obtained the warrant on suspicion of that person's guilt. An interesting question for students to consider is whether the sergeant could have obtained a warrant for the wife's arrest, given the evidence that he had already uncovered. Note that Columbo refuses to carry through the arrest, since he already has his eye on the real killer. Note also that the sergeant does not issue a *Miranda* warning to the suspect, although at the end of the scene he is preparing to "take her downtown." Columbo makes the same mistake in *Columbo Cries Wolf* (ABC television broadcast, Jan. 20, 1990).

61. Goodland finds Columbo rooting around in his greenhouse three times; twice Columbo indicates that "someone" (the gardener or another employee) told him *it would be all right to wait here*. The third time, when Columbo is searching for a bullet armed with a metal detector, Goodland challenges him again; significantly, Columbo does not explain how he entered the premises. If an employee did admit him, did Columbo identify himself as a policeman? If not, what result? Did he indicate that he was going to search the premises? If so, did the employee have authority to consent to a search? If not, can Columbo still use any evidence he uncovers during a search? If an employee admitted Columbo, does Goodland's repeated question "*Columbo, what are you doing here?*" constitute revocation of the consent? Does a domestic employee (gardener, housekeeper) have the right to consent to a police search of his employer's premises? See *infra* part III.B.5.b.

62. Goodland refuses to confess, although some of his subsequent statements to Columbo could be regarded as incriminating. Noting the absence of the *Miranda* warning, students should be prepared to argue the inadmissibility of such statements. See *infra* part IV.A.

*Columbo Cries Wolf*⁶³ presents a slightly different problem, partly because it does not follow the traditional *Columbo* pattern. In most episodes, the viewer knows who has committed the murder. In *Columbo Cries Wolf*,⁶⁴ both the viewer and Columbo suspect but do not know that a murder has been committed. Thus, while Columbo's initial request for a warrant is based on circumstantial evidence, he takes pains to accumulate more than the usual "gut feelings" to support his request.⁶⁵ Having duly acquired the warrant, he digs up the premises in vain looking for the victim's body.⁶⁶

Later, having dispatched his victim, the killer invites Columbo to apply for a warrant to search the scene for the victim's body. Columbo, having already unsuccessfully searched the premises, refuses, saying, "*I couldn't get another warrant. You've put me in the position of the boy who cried 'wolf'.*" Note however, that at this point in the show Columbo has little evidence beyond his own speculations to indicate that the murder has actually taken place, and that the body might be hidden at the scene. Before leaving, however, he asks the killer for permission to make a local call. He receives it, and dials the number of the victim's beeper, which the killer has thoughtlessly left on the body. When the beeper goes off, Columbo tracks down the sound and breaks down the wall behind which the body is hidden. Once he hears the beeper, does he have probable cause to suspect that the body is nearby? Does he need a warrant to destroy property in order to search a limited area for the body?

2. The Independent Source Exception

In *Fade In To Murder*,⁶⁷ Columbo enters the trailer of the prime suspect and pokes around. Does the suspect's subsequent failure to object to his intrusion amount to consent to the search?⁶⁸ Columbo comes across

63. ABC television broadcast, Jan. 20, 1990.

64. *Id.*

65. He gathers evidence regarding the supposed victim's usual habits, finds a bullet casing in the alley where the murder is likely to have occurred, and he establishes that the behavior of the individual appearing to be the victim is not consistent with the victim's normal behavior.

66. Does Columbo need a warrant to search the grounds? The co-owner of the home shouts at him to "dig up the grounds and find the body, Columbo." Can he infer permission from those words, or are they not to be taken literally, considering the man's anger at the time?

67. NBC television broadcast, Oct. 10, 1976.

68. Students should familiarize themselves with the law of search and seizure in regard to the automobile exception in order to discuss this scene. *See, e.g., California v. Carney*, 471 U.S. 386 (1984) (warrantless search of mobile home not in transit held to be lawful). On the mobile home

an important clue during his unauthorized visit: the shoes that the suspect wears to make him appear taller. Must he subsequently seek a search warrant in order to seize the shoes?⁶⁹

3. Searches Incident to Arrest

In *Death Lends a Hand*,⁷⁰ Columbo orders a search of the suspect after police officers restrain the man. Students should consider whether this search falls into the “search incident to arrest” category, given the fact situation; Columbo never tells the suspect he is under arrest, nor does he read him a *Miranda* warning.⁷¹

In *Agenda for Murder*,⁷² a cat-and-mouse game ends badly for the killer when Columbo uses bitemark evidence from a piece of Italian cheese to prove the man’s presence at the scene of the crime. He shows the killer a piece of chewing gum rescued from the man’s office wastebasket and a piece of cheese from the murder scene. Would Columbo need a warrant to search the man’s wastebasket for the gum, once admitted to his office? Is evidence consigned to a wastebasket within an office subject to the “trash can rule?”⁷³

The bitemarks on the cheese compared to the man’s dental chart will help to prove he was at the scene, possibly at the time the murder was committed. Note that the murderer steadfastly refuses to admit that he has

exception to the warrant requirement, see Kelly S. Buck, *Criminal Procedure: Warrantless Searches and Seizures—Is a Motor Home a Castle or a Carriage Within the Purview of the Fourth Amendment?* 6 WHITTIER L. REV. 947 (1984); Jacqueline I. Gibson, *Criminal Law: Warrantless Search of Motor Home Without Exigency—The Wheels of the Automobile Exception Roll On*, 25 WASHBURN L.J. 396 (1986); Janet L. Newcomb, *People v. Carney: Is a Motor Home a Vehicle or a Home For the Purpose of a Warrantless Search?* 7 CRIM. JUST. J. 389 (1984).

69. On the “independent source” exception, see LAFAYE, SEARCH AND SEIZURE, *supra* note 39, at § 11.4.

70. NBC television broadcast, Oct. 6, 1971.

71. Another example occurs in *A Deadly State of Mind* (NBC television broadcast, Apr. 27, 1975), in which Columbo tells the suspect he is under arrest, and another officer ostentatiously locks the exit and stands in front of it, but no one issues a *Miranda* warning. See *infra* part IV.A.

72. ABC television broadcast, Feb. 10, 1990.

73. Students should be familiar with the holdings of *California v. Rooney*, 483 U.S. 307 (1987) (Supreme Court refused to consider whether evidence seized without a warrant from a communal trash bin should be excluded since the lower court never rendered judgment capable of review) and *California v. Greenwood*, 486 U.S. 35 (1988) (individual can have no expectation of privacy in trash left for collection “outside the curtilage of a home”). In *Columbo Goes to College* (ABC television broadcast, Dec. 9, 1990), the lieutenant admits that he “took advantage” of the absence of both the attorney and his secretary to enter and search the office.

ever been at the scene of the crime. Assuming Columbo can place him at the scene, of what probative value is the killer's false statement at trial? Would Columbo have needed a warrant to obtain the dental chart? Would he need a warrant to obtain an impression of the suspect's teeth? Compare the premises invaded in this case with Columbo's entrance and search of Jarvis Goodland's conservatory in *The Greenhouse Jungle*⁷⁴ or his entrance and search of the actor's trailer in *Fade In To Murder*.⁷⁵

4. Evidence Held By Third Parties

Columbo often approaches third parties for permission to search for evidence (for example, phone or medical records).⁷⁶ These scenes can obviously foster class discussion of: 1) third-party consent to a search as an alternative to a warrant to search public or regulated industry records;

74. NBC television broadcast, Oct. 15, 1972.

75. NBC television broadcast, Oct. 10, 1976. See WHITEBREAD & SLOBOGIN, *supra* note 43, § 17.02(c) (on self-incrimination and compelled evidence). See also *Hayes v. Florida*, 470 U.S. 811 (1985) (fingerprinting permissible if reasonable suspicion exists that the suspect committed the crime and the fingerprint evidence will establish guilt or innocence). Assuming that *Hayes* controls, how would Columbo establish "reasonable suspicion" that the suspect committed the act? Columbo mentions this case as an example of the necessity for learning new investigative techniques in the episode *Columbo Goes to College* (ABC television broadcast, Dec. 9, 1990), when a student asks him if he has ever manufactured evidence to trap a killer. While the answer to this question is yes, as should be obvious from this Article, Columbo sidesteps the issue by discussing the utility of bitemark evidence. On the admissibility and reliability of bitemark evidence, see Robert A. De La Cruz, *Forensic Dentistry and the Law: Is Bite Mark Evidence Here To Stay?*, 24 AM. CRIM. L. REV. 983 (1987); Michael H. West & John A. Frair, *The Use of Videotape To Demonstrate the Dynamics of Bite Marks*, 34 J. FORENSIC SCI. 88 (1989); Allen P. Wilkinson & Ronald M. Gerughty, *Bite Mark Evidence: Its Admissibility Is Hard to Swallow*, 12 W. ST. U. L. REV. 519 (1985).

76. On the privacy expectation in medical records, see Carole M. Cleaver, *Privacy Rights In Medical Records*, 13 FORDHAM URB. L.J. 165 (1985); Judy B. Sloan & Betsy Hall, *Confidentiality of Psychotherapeutic Records*, 5 J. LEGAL MED. 435 (1984); Kathleen D. Yesenko, *Constitutional Law—Privacy—Invasion of Privacy Justified Where Hospital Records Are Sought For Grand Jury Investigation*, 26 VILL. L. REV. 499 (1981); Richard C. Turkington, *Legal Protection For the Confidentiality of Health Care Information in Pennsylvania*, 32 VILL. L. REV. 259 (1987); George B. Trubow, et al., *Privacy Rights in Cordless Telephone Conversations, Privacy Rights in Education Records, and the Good Faith Exception to the Exclusionary Rule*, 18 J. MARSHALL L. REV. 1015 (1984); Kimberly A. Kmentt, *Private Medical Records? Are They Public Property?*, 33 MED. TRIAL TECH. Q. 274 (1987).

and 2) the related question of reasonable expectation of privacy in records held by third parties.⁷⁷

In *How To Dial a Murder*,⁷⁸ Columbo acquires the suspect's medical records to verify that the man was under stress (in fact listening to his victim's frantic cries for help over the phone) during his EKG in his doctor's office. An issue for class discussion might be the amount of evidence Columbo had accumulated at that point to justify the request for a search warrant, if the physician had refused to turn over the records.

In *Agenda For Murder*⁷⁹ Columbo asks a third party bailee, the owner of a dry cleaning establishment, for permission to take away and examine the suspect's suit. He particularly wants to examine the suit because he believes it may be rain-spotted, proving that the suspect was out in a rainstorm and that he lied about his whereabouts on the night of the murder.⁸⁰ Columbo persuades the owner of the laundry to let him have the suit before it is cleaned. What authority does the owner have to turn the suit over to Columbo without a warrant?⁸¹ What is the suspect's expectation of privacy in property entrusted to a third party? Would the suspect have a cause of action against the third party who voluntarily turns over his property?⁸²

77. On the subject of the expectation of privacy in telephone company records, see Philip Carrizosa, *Warrantless Search of Phone Records Allowed By Court*, L.A. DAILY J., June 20, 1985, at 1. Apart from the relevant "shield" laws enacted by Congress and various states, see Robert C. Nabinger, *Constitutional Law—Search and Seizure—Warrantless Seizure of Telephone Billing Records Violates New Jersey Constitution*, 13 SETON HALL L. REV. 803 (1983); Mark Hansen, *P & G Looks For a Newsleak; Police Bypass Shield Law in Search of Phone Records For Calls to Reporter*, 77 A.B.A. J. 32 (1991).

78. NBC television broadcast, Apr. 15, 1978.

79. ABC television broadcast, Feb. 10, 1990.

80. In any case, students might want to evaluate the probative value of a rain-spotted suit to establish the killer's whereabouts on the night of the crime.

81. As it happens, while the owner and Columbo are discussing the transaction, an employee whisks the suit away and pops it into a machine for cleaning; the scene ends as a dismayed Columbo watches the suit whiz around in the machine's window. On third-party consent to a premises search, see Timothy E. Travers, Annotation, *Admissibility of Evidence Discovered in Warrantless Search of Property or Premises Authorized by One Having Ownership Interest in Property or Premises Other Than Relative*, 49 A.L.R. FED. 511 (1991).

The leading case justifying the issuance of a search warrant to search the premises of a third party for evidence of a crime is *Zurcher v. Stanford Daily*, 436 U.S. 547, 555 (1978) (issuance of warrant not barred by lack of reasonable suspicion that third party involved in criminal activity because warrants issued to search "places" and seize "things,") (citing *United States v. Kahn*, 415 U.S. 143, 155 n.15 (1974)).

82. What if, for example, the suspect wins a harassment suit against the police based on their lack of reasonable belief that criminal activity was occurring on the premises? Could the police still maintain that they had a reasonable belief that the third party could consent to the search?

5. The Plain View Exception

When Columbo chases down an attorney in *Columbo and the Murder of a Rock Star*,⁸³ he flashes a search warrant to justify his inspection of a partner's automobile.⁸⁴ He is looking for evidence in the windshield wiper well; does he need a warrant to search the well? Arguably its contents are in "plain sight."⁸⁵ Why would Columbo incur the delay in seeking a warrant, knowing that a rainstorm or (more likely) a car wash during the waiting period might eliminate the evidence?⁸⁶ What is the difference, if any, between searching the windshield wiper well for berries and looking through the car's windshield for its vehicle identification number?

a. Warrantless Searches Conducted With Permission

On occasion, Columbo does conduct a search with the permission of the owner. However, students should consider whether such permission is unbounded or whether the grantor has a reasonable expectation that the police will only search a limited although as yet undefined area. For example, Columbo asks the killer in *Prescription: Murder*⁸⁷ to allow him to conduct a second search of the scene of the crime. The killer agrees to meet him at the scene in order to supervise the search; the killer then arrives ahead of Columbo. Shortly after the killer's arrival, Columbo appears at the door, hours before their appointment, and attempts to enter. When the killer asks him for an explanation, saying, "What are you doing here? Don't you need a search warrant?" Columbo replies, "I didn't think it was necessary . . . you gave me permission, didn't you?" Did he? Or

83. ABC television broadcast, Apr. 29, 1991.

84. Students might question whether the attorney in this episode is really capable of performing adequately in two diverse areas of law: criminal defense and real estate. Does he commit a breach of legal ethics in so doing? Similarly, the attorney in *Try and Catch Me* (NBC television broadcast, Nov. 21, 1977) seems to act as a general practitioner but handles wills, estate planning, investment advising, and (at least initially) criminal defense.

85. The first *plain view* exception to the Fourth Amendment emerged in *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), in which the Supreme Court established the criteria for a *plain view* seizure: 1) police entry into the area containing the evidence must be lawful; 2) police discovery of the evidence is accidental; and 3) the police can discern the relevance of the evidence immediately. See WHITEBREAD & SLOBOGIN, *supra* note 43, at 246 *passim* (discussing the three criteria and their justifications).

86. Is he overcautious or do the writers lack an understanding of the "plain view" exception?

87. NBC television broadcast, Feb. 20, 1968.

was permission to search contingent on his presence and on condition that the search be carried out at a particular time?

*Dead Weight*⁸⁸ contains a scene in which Columbo orders his men to search the boat of the leading suspect, General Hollister, without the permission of the owner and without a warrant. In fact, when questioned, Columbo states categorically that the men are not to bother about a warrant, since the suspect would probably allow a search of his home.⁸⁹ Discussion of this scene would allow students to consider whether such permission if granted for a search of the home could be construed to extend to the boat moored some distance away.⁹⁰ Note however that Hollister's home is on the coast, and the boat is moored in a marina with direct access to the ocean. Does Columbo have jurisdiction⁹¹ to search a vessel moored in waters patrolled by the United States Coast Guard?⁹²

*Grand Deceptions*⁹³ illustrates Columbo's preferred method of obtaining entry and/or evidence without a warrant. In this episode, Columbo appears on the prime suspect's doorstep and charms his way inside. The

88. NBC television broadcast, Oct. 27, 1971.

89. "If not, THEN we'll get a warrant. In the meantime, search the boat . . . and pay particular attention to the engines." What implications for the probable cause requirement to obtain the warrant? Is the independent source exception implicated?

90. See *United States v. Dunn*, 480 U.S. 294 (1987) (barn 60 yards from home was not within its curtilage; however, even if defendant had reasonable expectation of privacy in barn, police standing in open field could easily look into barn with the aid of flashlight; use of flashlight did not create unreasonable search).

91. Note that jurisdiction is sometimes a question in *Columbo* episodes, and law students should realize that it can form a basis for challenging the legality of a search or an arrest, or a criminal proceeding. In *Swan Song* (NBC television broadcast, Mar. 3, 1974), the lieutenant turns up even though the initial finding is one of accidental death (a plane crash) and the deaths are being competently investigated by a Federal Aviation Administration official. Similarly, both the FBI and Columbo investigate the case in *Ransom for a Dead Man* (NBC television broadcast, Mar. 1, 1971). What likely areas of conflict might exist between local police and federal officials in an investigation such as this one? What cooperation is due? What friction might arise? What possible resolution of conflicts might there be? Of course in all of these cases, the writers merely want to give Columbo a change of venue or get him involved in the story in the first twenty minutes, a requirement of the Columbic formula. Usually their methods are so elegant that the viewer barely notices the anomaly of Columbo's presence. However, students might want to consider the general question of the timing and appropriateness of police intervention, perhaps in family dispute or crowd control contexts. In *The Conspirators* (NBC television broadcast, May 13, 1978) Columbo brings in the FBI and the Coast Guard for help in searching the ship, both moored and under sail. What would be the proper procedure for invoking the help of a federal agency?

92. On the warrantless search of watercraft, see David L. Bialosky, *Fourth Amendment—Steering Away From Automobile Detention Precedents To Justify Warrantless Searches of Pleasure Boats in Inland Waters*, 74 J. CRIM. L. & CRIMINOLOGY 1282 (1983).

93. ABC television broadcast, May 1, 1989.

suspect mentions that he is expecting a caller, who happens to be a married woman, and politely indicates that he expects Columbo to leave the premises. Columbo, however, heads toward the bathroom, saying, "*You don't mind if I use your bathroom, do you?*" Before the suspect can object, Columbo has closed the door, whereupon he proceeds to investigate the contents of the medicine cabinet and examine other objects in the room for evidence of the caller's identity. Using a handkerchief to protect any fingerprints, he removes evidence (a travel toothbrush) establishing the caller's identity from the medicine cabinet. While Columbo clearly wants only to establish the identity of the suspect's visitor, rather than use the evidence directly against the suspect, he has no authority to remove any object from the suspect's apartment without a warrant. Assuming that he later wants to use the evidence to promote a theory that the suspect killed the victim in order to prevent disclosure of the adultery, can a prosecutor introduce the toothbrush or Columbo's testimony concerning its discovery into evidence?⁹⁴ By proceeding with a search before the suspect can object or without the suspect's knowledge, does Columbo violate the suspect's rights? If so, what effect on the admissibility of the evidence obtained? How difficult might it be for Columbo to obtain the evidence subsequently under the independent source exception?⁹⁵

94. It does not belong to the suspect, but to a third party. Does she have standing to challenge the introduction of this evidence, since she is not a defendant? See Richard A. Edwards, *Standing To Suppress Unreasonably Seized Evidence*, 47 NW. U. L. REV. 471 (1952); Comment, *Standing To Object To an Unreasonable Search and Seizure*, 34 U. CHI. L. REV. 342 (1967); see also *United States v. McNeal*, 955 F.2d 1067 (6th Cir. 1992) (defendant lacks privacy interest in evidence incriminating him but seized in the apartment of a third party). By analogy, only the defendant can challenge the seizure, since the apartment is his. When Columbo visits the third party at her home, she refuses to answer and attempts to leave. Columbo's response: "*Don't make me stop you, ma'am.*"

95. Similarly, in *Any Old Port In a Storm* (NBC television broadcast, Oct. 7, 1973), Columbo surreptitiously removes a bottle of French port from the suspect's wine cellar *sans* warrant. He then uses the port in an elaborate scheme to force the suspect into revealing his guilt.

b. Warrantless Searches Facilitated by Third Parties⁹⁶

In *Lady in Waiting*,⁹⁷ Columbo obtains a key to the murder scene's front door by asking a locksmith to make one.⁹⁸ He does not mention any kind of warrant or official sanction for this request. The coroner's jury has officially ruled the death an accidental shooting. Columbo has not obtained a warrant for a search of the premises apart from his right to search the immediate scene of the crime, directly after the incident. No charges have been filed against the suspect. Has Columbo violated the rights of the suspect?⁹⁹

96. Conversely, on the question of whether a third party's consent to a search overcomes the presumption against the validity of warrantless searches, see for example *Illinois v. Rodriguez*, 497 U.S. 177 (1990) (reasonable belief by police that third party had authority to consent to search does not violate Fourth Amendment prohibition against warrantless searches); *United States v. Buettner-Janusch*, 646 F.2d 759 (2d Cir. 1981) (discussing ability of third parties to consent to search of area defendant reasonably regards as private). See also *United States v. Matlock*, 415 U.S. 164 (1974) (voluntary consent by third party sufficient to permit introduction of evidence when third party had common possessory authority over premises searched); Gary L. Wimbish, *The U. S. Supreme Court Adopts "Apparent Authority" Test To Validate Unauthorized Third Party Consent To Warrantless Search of Private Premises*, 20 CAP. U. L. REV. 301 (1991); Timothy E. Travers, Annotation, *Admissibility of Evidence Discovered in Search of Adult Defendant's Property or Residence Authorized by Defendant's Minor Child—State Cases*, 99 A.L.R. 3d 598 (1991).

97. NBC television broadcast, Dec. 15, 1971.

98. Few jurisdictions require a locksmith to request proof of identification before facilitating another person's entry into a locked car or house, a situation which has been the subject of media scrutiny recently. See Michael H. Cottman, *Unlocking Locksmiths*, NEWSDAY, Oct. 10, 1991, at 23 (citing proposed NY bill to require locksmiths to demand ID); Carolyn Hughes Crowley, *Locked Out!*, WASH. POST, Jan. 22, 1990, at C5 (citing interview with DC locksmith who requires ID); *New Bills*, THE RECORDER, Feb. 27, 1992, at 15 (citing pending California bill which would "require locksmiths, when providing access to a vehicle or other specified property, to verify identification of clients and maintain work orders containing specified information").

99. Consider *Irvine v. California*, 347 U.S. 128 (1954) (police use of locksmith's services to enter defendant's home without a warrant to search for evidence of illegal gambling and wiretap his phone held not violative of Fourteenth Amendment, when police suspected defendant of illegal activity but had no independent evidence of it), contrasted with *G. M. Leasing Corp. v. United States*, 429 U.S. 338 (1977) (I.R.S. agents' entry into and warrantless search of business premises facilitated by locksmith held violative of Fourth Amendment when premises were clearly private home and warrantless entry was intended only to seize assets necessary to satisfy judgment).

IV. COLUMBO AND THE FIFTH AND SIXTH AMENDMENTS

A. *The Miranda Warning*

The proper issuance and timing of a *Miranda* warning is another area in which *Columbo* can be helpful to law study. While *Columbo* understands more about *Miranda* than he does about warrants, he still manages to get some of it wrong in the earlier episodes. Even in the second series of episodes, he's a bit casual about issuing the warning.¹⁰⁰ Using *Miranda* and its progeny to analyze *Columbo's* interrogation of suspects and witnesses allows students to differentiate between the investigatory and accusatory phases of questioning and to examine the difference between clever police work and entrapment.

1. Who Should Be Issued the Warning

In *Etude in Black*,¹⁰¹ *Columbo* and a young witness named Audrey have a somewhat acrimonious discussion about the privilege against self-incrimination. Says the precocious Audrey, "If you question me, you have to read me my rights." "Wrong!" shouts *Columbo* gleefully (it's the first time she's been wrong in their conversation). "I only have to read you your rights if I take you downtown." Audrey's comment permits the inference that she believes that an official interrogation may be at hand and, as a result, that her liberty of movement is temporarily suspended. An interesting class discussion could ensue from student consideration of Audrey's perception that she is not free to leave the area and whether that perception is sufficient to trigger the requirements of *Miranda*.¹⁰²

100. On the *Miranda* warning and its application, see generally J. F. Ghent, Annotation, *What Constitutes "Custodial Interrogation" Within Rule of Miranda v. Arizona Requiring That Suspect Be Informed of His Federal Constitutional Rights Before Custodial Interrogation*, 31 A.L.R. 3D 565 (1991).

101. NBC television broadcast, Sept. 17, 1972.

102. In any case, this situation is an impossibility. Since she is a minor, he can only take her into custody and turn her over to the juvenile authorities. See, e.g., WILLIAM R. KURTZ AND PAUL C. GIANNELLI, OHIO JUVENILE LAW § 5.02 (2d ed. 1985) (on custody, arrests, and stops of juveniles).

Further, if it is sufficient, could she, as a minor, effectively waive her *Miranda* rights?¹⁰³

The list of suspects who get no *Miranda* warning in the first series of episodes is distressingly long: the killers in *Any Old Port in a Storm*,¹⁰⁴ *Now You See Him*,¹⁰⁵ *Make Me a Perfect Murder*,¹⁰⁶ and *Requiem For a Falling Star*,¹⁰⁷ for example, get no notice from Columbo that their statements may be used against them.¹⁰⁸ Students viewing these episodes could discuss the likely outcome at trial for each of these defendants based on the absence of the warning.¹⁰⁹

By 1989, when *Murder in Malibu*¹¹⁰ takes place, Columbo tells an arresting officer to issue a warning, but stops him when it becomes clear that although the man has confessed to shooting the victim, she was already dead at the time he fired his weapon. Columbo's reason for halting the proceeding is not entirely clear, since he still intends to take the man in for questioning, although he states that "*it's not illegal to shoot a dead body.*"¹¹¹ Both he and the audience suspect that the man is actually the

103. On the subject of juvenile waiver, see, for example, THOMAS GRISSO, *JUVENILES' WAIVER OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE* (1980) and IJA-ABA COMMISSION ON JUVENILE JUSTICE STANDARDS, *STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES* (1976).

104. NBC television broadcast, Oct. 7, 1973.

105. NBC television broadcast, Feb. 29, 1976.

106. NBC television broadcast, Feb. 28, 1978.

107. NBC television broadcast, Jan. 21, 1973.

108. Students should consider whether Columbo omits the warning because he has not yet arrested the suspects. If so, what does that imply about the "voluntariness" of their statements? Can a suspect in a state of emotional upheaval truly make a "voluntary" statement if she is uncertain whether arrest will follow? See also *infra* part IV.A.5.b.

In *A Deadly State of Mind* (NBC television broadcast, Apr. 27, 1975), Columbo actually tells the suspect he is under arrest, but fails to issue a *Miranda* warning. After asking whether Columbo has a warrant, the suspect remains silent, although Columbo continues to reconstruct the crime.

109. In *Make Me a Perfect Murder* (NBC television broadcast, Feb. 28, 1978), Columbo accosts the suspect as she is leaving a projection booth and insists that she remain while he shows her a videotape. Does his action constitute an arrest of the suspect? If so, what effect does this have on her subsequent statement implying that although she is guilty she intends to fight the murder charge? Does she know more constitutional law than Columbo? Note that he arrives with a videotape prepared previously for him, but without a warrant.

110. ABC television broadcast, May 14, 1990.

111. Columbo seems here to be making the distinction so dear to criminal law professors of the difference between mistake of fact and mistake of law. In fact, however, he is pointing out the *impossibility* of the act mentioned to cause death. On impossibility in criminal law, see, for example, George P. Fletcher, *Constructing a Theory of Impossible Attempts*, 5 CRIM. JUST. ETHICS 52 (1986); R. J. Spjut, *When Is an Attempt To Commit an Impossible Crime a Criminal Act?*, 29 ARIZ. L. REV. 247 (1987).

real killer. Columbo hopes to be able to prove it eventually, but the killer has foiled him by confessing to an act that could not have caused the victim's death. If the questioning brings out some evidence or clue that allows Columbo to piece together the truth, although insufficient to otherwise convict without a confession, will the guilty man's lawyer be able to claim that he should have been given his *Miranda* warning and was thus questioned illegally or under duress? In the episode, the killer confesses under the (supposed) strain of hearing about the coroner's report. May he claim that his confession was involuntary (though ineffectual) and his subsequent questioning illegal?

Columbo issues *Miranda* warnings twice in *Columbo and the Murder of a Rock Star*.¹¹² After arresting the young man whom the real killer has framed for the murder, he assures the killer, a criminal defense attorney, that he read the suspect his rights.¹¹³ In the last scene of the show, the lieutenant also gives the attorney his *Miranda* warning. Earlier in the scene, Columbo insists that the attorney accompany him outside the house. Students might consider whether Columbo should have read the attorney his rights at that point, since arguably the man is already in custody and not free to decline Columbo's request.¹¹⁴

One of the suspects in *Rest In Peace, Mrs. Columbo*¹¹⁵ is clearly confused about whether he is under arrest. We never hear whether Columbo issued him a *Miranda* warning, although we know that the suspect was brought in a squad car. "Just answer a few questions," says Columbo, "and you'll be free to leave." The man is furious at the inanity

112. ABC television broadcast, Apr. 29, 1991.

113. It's questionable whether Columbo really believes the young man committed the murder. This should lead students to discuss the ethics of arresting someone whom a police officer does not believe committed the crime. Does the young man have grounds for a false imprisonment suit? In *Forgotten Lady* (NBC television broadcast, Sept. 14, 1975), Columbo actually does arrest someone whom he knows to be innocent because the real killer suffers from a terminal illness leaving her unable to remember having committed the crime.

114. See *Orozco v. Texas*, 394 U.S. 324 (1969) (police officer admitted that defendant was not free to leave); *Henry v. United States*, 361 U.S. 98 (1959) (agents detained defendant without probable cause). Columbo manages to read most of the warning from a battered card he keeps in his pocket. Does he read enough to constitute an adequate warning under *Miranda*, given the *Duckworth v. Egan* decision in which the Supreme Court held that summarizing the rights constituted adequate warning? *Duckworth v. Egan*, 492 U.S. 195 (1989). Does the attorney's silence indicate a waiver? See *Westover v. United States*, 384 U.S. 436 (1966) (one of three cases joined with *Miranda*, requiring an "articulated waiver"); *North Carolina v. Butler*, 441 U.S. 369 (1979). Justice Stewart, writing for the majority in *Butler*, held that silence "coupled with an understanding of [the defendant's] rights and a course of conduct indicating waiver" could "support a conclusion" of waiver. *Id.* at 373.

115. ABC television broadcast, Mar. 31, 1990.

of the questions and demands “*Is that all?*” Given Columbo’s phrase, “*you’ll be free to leave,*” in addition to the manner in which the man was brought in for questioning, students should be able to discuss the factors that argue for or against the issuance of a warning.

The “court order” Columbo flourishes in *Columbo Goes to the Guillotine*¹¹⁶ seems to be an order to the suspect not to leave the city, rather than an arrest warrant. Columbo takes the suspect back to the “parapsychology foundation” for a demonstration of his own psychic abilities, accompanied by a fleet of squad cars, but allows the suspect to leave at the end of the demonstration. Should Columbo give the suspect a *Miranda* warning? Although he does not interrogate the suspect, he does take him into custody. If the suspect makes an incriminating statement during custody, what result?

2. The Timing of the Warning

The confrontation and arrest scenes in *Now You See Him*,¹¹⁷ *Make Me a Perfect Murder*,¹¹⁸ and *Death Lends a Hand*¹¹⁹ are only three of many episodes useful in demonstrating the timing of *Miranda*. After studying relevant cases, students can discuss the points at which Columbo should give each suspect his or her warning.

Overhearing a suspicious conversation between Columbo and another officer, the killer (“The Great Santini”) in *Now You See Him*¹²⁰ runs toward the room intending to investigate and perhaps to flee. At this point, he feels, and is, at liberty. However, Columbo suddenly appears in the room, saying, “*There’s no place to run.*” Does (or should) this remark substantially change Santini’s perception of his ability to leave the room? Columbo proceeds to accuse Santini, who responds, “*I thought I had committed the perfect murder.*” Is his a voluntary, admissible confession?

In *Make Me a Perfect Murder*,¹²¹ Columbo accosts killer Kay Freestone as she attempts to leave the control room of a studio. He insists that she remain while he recounts his theory of the case, ultimately presenting her with evidence he has brought with him, and arresting her. She responds that she intends to fight the charge and predicts that her

116. ABC television broadcast, Sept. 16, 1989.

117. NBC television broadcast, Feb. 29, 1976.

118. NBC television broadcast, Feb. 28, 1978.

119. NBC television broadcast, Oct. 6, 1971.

120. NBC television broadcast, Feb. 29, 1976.

121. NBC television broadcast, Feb. 28, 1978.

chances of acquittal are better than Columbo believes. Does Columbo's refusal to allow Freestone to leave constitute an arrest? If so, is her statement voluntary and admissible?

In the final minutes of *Death Lends a Hand*,¹²² the following interchange takes place. Columbo accosts the suspect and asks him to "come downtown." Reasonably enough, the suspect demands to know, "Am I under arrest?" Columbo responds, "You could say so." Does this constitute notice to the suspect that he is indeed under arrest? If so, and Columbo does not give him his *Miranda* warning, what is the effect on any subsequent statements? Columbo orders an officer to restrain the suspect from disposing of something in his pocket and to confiscate it. Is this a legal search incident to an arrest?¹²³ If Columbo has issued no *Miranda* warning, what result? The suspect then tells the victim's husband, "It was an accident." Absent the warning, is the statement voluntary? Admissible?¹²⁴

Columbo also accosts and traps the killer in *Troubled Waters*.¹²⁵ However, all of the killer's actions take place in international waters, aboard a vessel manned by British officers; the impression is that the vessel

122. NBC television broadcast, Oct. 6, 1971.

123. Note that the "evidence" confiscated bears no relationship to the crime. It was a contact lens, which the killer believes belonged to the victim. However, Columbo tells the husband what he already knew before the search and arrest—that the woman was wearing both lenses. Can the legality of the search be attacked on the grounds that Columbo has no reasonable suspicion that the killer is attempting to conceal evidence of a crime (in fact, Columbo has certain knowledge that such an attempt is impossible)? Assuming he had wanted one, could Columbo have gotten a search warrant for the car, or would his knowledge that the lens was not inside constitute a request for a legal fishing expedition?

Compare Columbo's use of the serendipitously placed lens with his behavior in *The Bye-Bye Sky High I. Q. Murder Case* (NBC television broadcast, May 22, 1977). The killer uses an umbrella to catch the remains of firecrackers whose simulation of the sounds of gunshots give him an alibi. Columbo reconstructs the killer's method with the use of a substituted umbrella. Addressing the suspect's concern about admissible evidence, Columbo assures him that this particular umbrella is not his: "We're not allowed to get evidence that way."

124. The garage scene is quite similar to the restaurant scene in *Now You See Him* (NBC television broadcast, Feb. 29, 1976). While Columbo has manufactured a reason for the killer's car to be in a particular, enclosed area (a garage) and induced the killer to break into the garage to check it for evidence, the killer does not feel that his liberty has been compromised until after Columbo accosts him with the words "What are you looking for?"

125. NBC television broadcast, Feb. 9, 1975.

is of United Kingdom registry. Since Columbo is out of his jurisdiction on board the ship, must he give the killer a *Miranda* warning at any time?¹²⁶

3. The Content of the Warning

In *Agenda For Murder*,¹²⁷ Columbo opens the questioning of the suspect, a criminal defense attorney, by stating, “*You know your rights.*”¹²⁸ The attorney does not reply.¹²⁹ Does Columbo’s statement rise to the level of a *Miranda* warning?¹³⁰

126. On the operation of the Bill of Rights outside the United States, see, for example, *United States Support of Canadian Search of United States Vessel on the High Seas Did Not Violate Defendant’s Fourth Amendment Rights*, 16 VAND. J. TRANSNAT’L L. 712 (Jon R. Harris, Jr. et al. eds., 1983); Susan M. Weidner, *The Constitutionality of Applying State Wrongful Death Statutes on the High Seas in the Domain of the Death on the High Seas Act (DOHSA)*, 31 LOY. L. REV. 135 (1985); Duane A. Wilson, *Constitutional Law—Search and Seizure of Foreign Vessels on the High Seas Permissible If the Vessel is Subject to the Operation of United States Law, and Evidence Acquired in Violation of International Law Does Not Require Exclusion*, 15 VAND. J. TRANSNAT’L L. 227 (1982).

In this episode, Columbo becomes suspicious of the evidence against the most likely suspect when he finds a receipt for a gun among a number of other receipts. He explains to the real killer that all the other receipts represent tax deductions (business expenses). Thus, it would be inconsistent for the suspect to have kept this particular receipt among them.

127. ABC television broadcast, Feb. 10, 1990.

128. Possibly, but doesn’t he get to hear them anyway? Even an attorney faced with questioning or arrest may be too flustered to have the presence of mind to safeguard her rights in a stressful situation. However, when John J. Flynn, the winning attorney in *Miranda v. Arizona*, 384 U.S. 436 (1966), was arrested on suspicion of drunk driving, he interrupted the officer’s *Miranda* warning with the words, “*I don’t need that. I was Miranda’s attorney.*” *Lawyer Flynn Cited With DWI*, PHOENIX GAZETTE, Feb. 24, 1975, at A12. Was the waiver voluntary even though he was stopped for drunken driving and his blood alcohol level was .18%? *Id.* The author is indebted to Jonathan Entin for sharing this anecdote. He’s been savoring it for years.

129. Does his silence constitute a waiver? Columbo has served him with an arrest warrant. Students should also discuss whether, given the courts’ treatment of pre-*Miranda* silence, a defendant can ever protect himself from self-incrimination if the time period between questioning and arrest is a long one and the suspect does not believe he is under arrest. See *supra* note 100 and *infra* note 185.

130. If not, can the attorney’s silence be held against him, particularly since as a criminal attorney (in both senses of the term), he knows the import of pre-*Miranda* silence? See *Fletcher v. Weir*, 455 U.S. 603 (1982) (a suspect’s silence before he has received a warning is less ambiguous than after he has received it).

4. The Reality of the Warning

Vivian Dimitri begins her admission of guilt in *Rest In Peace, Mrs. Columbo*¹³¹ when she believes that her attempt on Columbo's life is successful. As he fakes the effects of poisoning, Columbo issues a *Miranda* warning. Although Vivian does not know it, another police officer is taping her conversation with Columbo. Thus, although she is aware that she is confessing, she does not realize that Columbo is serious. What effect on the admissibility of the confession?

5. Waiver, the Right To Counsel and Continued Questioning

Clearly the suspect's right to counsel attaches as soon as Columbo delivers the *Miranda* warning. However, in some cases, he continues to question the suspects, or to elicit their statements, in the absence of an attorney. What effect should this behavior have on statements made subsequent to the *Miranda* warning?¹³²

a. Waiver

Columbo gives the criminal defense attorney in *Columbo and the Murder of a Rock Star*¹³³ his warning by attempting to read it off a battered card he keeps in his pocket; the lawyer motions him away. Is this a voluntary waiver of *Miranda* rights? As Columbo directs the killer in *Any Old Port in a Storm*¹³⁴ to his Peugeot, he asks, "Do I get a confes-

131. ABC television broadcast, Mar. 31, 1990.

132. The literature discussing the right to counsel is enormous. The leading case is of course *Gideon v. Wainwright*, 371 U.S. 335 (1963). See also Laurie S. Fulton, *The Right To Counsel Clause of the Sixth Amendment*, 26 AM. CRIM. L. REV. 1599 (1989); James J. Tomkovicz, *Standards For Invocation and Waiver of Counsel in Confession Contexts*, 71 IOWA L. REV. 975 (1986). On the presence of counsel during searches, see *United States v. Wade*, 388 U.S. 218 (1967) (presence of counsel required at post-indictment lineup); *Stovall v. Denno*, 388 U.S. 293 (1967) (presence of counsel required at most one-on-one confrontations); *Gilbert v. California*, 388 U.S. 263 (1967) (elaborating on *Wade*, stating that the obtaining of handwriting samples from the suspect does not require presence of counsel, since this type of evidence can be duplicated at trial). "After . . . *Gilbert*, it appears that the only pretrial identification procedures which implicate the right to counsel are lineups and one-to-one confrontations. There are several limitations on the right to counsel in these situations as well." WHITEBREAD & SLOBOGIN, *supra* note 43, at § 17.02(a)(1)-(2).

133. ABC television broadcast, Apr. 29, 1991.

134. NBC television broadcast, Oct. 7, 1973.

sion?" The killer agrees to admit his guilt, and Columbo issues no warning. Is this a voluntary waiver?¹³⁵

b. The Right to Counsel

Timing as well as continued questioning in the absence of counsel are the issues in *Columbo Goes To College*.¹³⁶ After Columbo confronts and accuses the suspects, he tells one of the officers to "book 'em." Then he asks one of the culprits, "Why'd ya do it?" The suspect responds, "To show that we could." Since Columbo does not give the requisite *Miranda* warning immediately after the arrest, and in fact questions the suspect, students should be prepared to discuss the likelihood of successful suppression of the arrestee's statement.¹³⁷

c. Continued Questioning

The arrest and subsequent questioning of Neal Cahill in *Mind Over Mayhem*¹³⁸ illustrates content, timing, waiver, and ethics problems. After Columbo announces that Cahill is under arrest, Cahill's father (the real killer) warns him, "Don't say anything." Columbo responds, "That's good advice. It can be used against you." Does this comment rise to the level of a *Miranda* warning? Ignoring his father, the detainee asks what evidence Columbo has against him, and Columbo obliges with a list of points, including an eyewitness identification of the young man by a supposed witness. The suspect continues to protest his innocence, and Columbo finally directs the police officers present: "Take him downtown and book him. Read him his rights in the car." The entire episode is staged to force the father to confess, believing that his son will surely be convicted. Has Columbo violated the rights of the detainee by fabricating a witness-suspect confrontation that upsets the killer and induces him to talk?

135. See generally WHITEBREAD & SLOBOGIN, *supra* note 43, at § 16.05 (on custody, questioning, timing and content of the *Miranda* warnings, and waiver).

136. ABC television broadcast, Dec. 9, 1990.

137. The relevant case is *Edwards v. Arizona*, 451 U.S. 476 (1981) (once accused has requested counsel, only he can re-initiate communication with police). However, these detainees have not been advised of their rights, including the right to counsel, so it is difficult to see how they could invoke *Edwards*.

138. NBC television broadcast, Feb. 10, 1974.

In *Old Fashioned Murder*,¹³⁹ Columbo questions a suspect in her cell. Halfway through the interrogation, he points out that she need not answer any of his questions without a lawyer present, then continues to question her. She continues to answer him, although not loquaciously. Are her statements before his comment admissible? Is his eventual warning to her effective? That is, at that point can she voluntarily waive her rights?¹⁴⁰

d. Obtaining the Admissible Confession

One of Columbo's favorite devices is the heart-to-heart talk with the number-one suspect, whom we already know is the murderer. The arrest comes as the *denouement* of these talks. Therefore, Columbo almost never utters those fateful words, "You have the right to remain silent." Indeed, Columbo's one hope for most of his cases is that his number-one suspect will *not* remain silent, because as clever as Columbo is in analyzing obscure clues, the murderer invariably has not left him sufficient probative evidence to get a conviction. The detective's one hope is a voluntary confession from the overconfident malefactor. However, the murderers' statements range from voluntary and outright confession to silence, covering a wide range of muddled remarks and ambiguous statements by suspects arguably incompetent to waive their rights.

6. The Voluntary Confession

One way to obtain a confession is to lie to the suspect, while never uttering the crucial words, "*You're under arrest.*"¹⁴¹ In *Prescription: Murder*,¹⁴² the first *Columbo* pilot, Columbo tells the suspect, Dr. Ray

139. NBC television broadcast, Nov. 28, 1976.

140. Columbo asks her whether she has "*ever seen*" the briefcase and art object he has brought with him. Compare this with the questioning of the detainee in *United States v. Kucinich*, 404 F.2d 262 (6th Cir. 1968), in which the appeals court found that statements made by an accused while in custody are presumed to be involuntary unless the peace officer issues an appropriate warning.

141. While Columbo routinely lies to the suspect/murderer, he almost *never* lies to anyone else he interrogates. For example, in the episode *Death Lends a Hand* (NBC television broadcast, Oct. 6, 1971), the victim's lover begins to confess his involvement with her. Columbo cuts the man off by telling him not to say any more and to get an attorney. But see episodes such as *Mind Over Mayhem* (NBC television broadcast, Feb. 10, 1974), in which he manufactures evidence against a suspect he knows to be innocent.

142. NBC television broadcast, Feb. 20, 1968.

Fleming, that his lover and accomplice has killed herself. Columbo asks Fleming for a confession, since the only witness¹⁴³ linking him to the crime is now eliminated.¹⁴⁴ "All right," says Fleming, and offers what appears to be a confession, assuming that it will not be admissible in court.¹⁴⁵ In this case, must Columbo give the warning? He has not told Fleming he is under arrest, or given any impression that this is the case.¹⁴⁶ In *Blueprint For Murder*,¹⁴⁷ Columbo confronts the suspect as he takes the body out of his car trunk.

In later episodes the writers try to indicate some character flaws in the suspect/murderers that would explain or justify either total capitulation at the end of the movie, as in *Lady in Waiting*, or the assumption that the murderer is glad to be caught, as in *Swan Song*¹⁴⁸ or *Any Old Port in a Storm*.¹⁴⁹ Students might consider which "character flaws" actually

143. The accomplice, played by the appropriately named Katherine Justice, is something of a constitutional law scholar herself. In the face of Columbo's repeated questioning throughout the episode, she insists he either leave her alone or charge her and allow her to call her attorney. Does Columbo's trademark repeated questioning amount to a violation of her Fourth Amendment rights? See *United States v. Wilson*, 60 U.S.L.W. 2426 (4th Cir. Dec. 16, 1991) in which a police officer's "Columbo" (repeated questioning after suspect had walked away) amounted to a seizure for Fourth Amendment purposes.

144. Sit through *Prescription: Murder* (NBC television broadcast, Feb. 20, 1968), or see COLUMBO PHILE, *supra* note 23, at 27.

145. Students should consider the line of cases in which police conduct is a major factor in determining the voluntariness of the confession, considering that Columbo's favorite tactic is to accost and pressure the suspect in order to accumulate enough evidence to justify an arrest. See *Spano v. New York*, 360 U.S. 315 (1959) (police officer was induced to confess based on the false and emotional statements of a colleague on the force; confession deemed involuntary); *Leyra v. Denno*, 347 U.S. 556 (1954) (state psychiatrist was presented to the defendant as a physician sent to treat him for a medical condition; during their subsequent conversation the psychiatrist induced the defendant to confess; confession deemed involuntary); *Crooker v. California*, 357 U.S. 433 (1958) (accused was given food and drink, allowed to smoke, and interrogated only for short periods of time; confession deemed voluntary). *Miranda v. Arizona*, 384 U.S. 436 (1966), overruled *Crooker* and is now the standard by which confession cases are judged; however, police conduct is still one of the factors used in determining the status of statements made during custodial interrogation. Compare Columbo's approach toward Fleming in *Prescription: Murder* and his interrogation of Adrian Carsini in *Any Old Port In a Storm*.

146. Again, at what point, if any, must Columbo give the suspect his *Miranda* warning? See *supra* part IV.A.2. Compare this scene with the last scene in *Negative Reaction* (NBC television broadcast, Oct. 6, 1974) in which an officer forces the suspect to accompany him downtown without giving the warning.

147. NBC television broadcast, Feb. 9, 1972.

148. NBC television broadcast, Mar. 3, 1974.

149. NBC television broadcast, Oct. 7, 1973. Artist Max Barsini in *Murder: A Self-Portrait* (ABC television broadcast, Nov. 25, 1989) is so egotistical that he makes what could constitute an incriminating statement during an unusually low-key cat-and-mouse discussion with Columbo.

constitute mental incapacity, possibly rendering the confessions involuntary and unusable.

For example, the murderer in *Fade In to Murder*¹⁵⁰ confesses willingly, almost eagerly, to Columbo in the final moments of the show.¹⁵¹ However, this killer, an actor portraying a television detective, has clearly confused his real life and fictional lives by the end of the episode. In the last few minutes, he veers rapidly between his television and real personas, so that both the viewer and Columbo wonder to what extent the man is conscious of his surroundings and his real identity. When confronted, the killer asserts to Columbo that he believes that in this case, “*the murderer has the sympathetic part.*”¹⁵² Is his confession truly voluntary, or could a defense attorney argue that the man is too disoriented to waive his rights? Contrast his collapse with the childish behavior of movie director Alex Brady (*Murder, Smoke and Shadows*¹⁵³) who maintains a retreat called “The Boys’ Club” furnished with waterbed, model trains and an ice cream and soda bar, and who sees the world around him in terms of his ability to transform it through special effects. While Brady

After Columbo explains that the major clue pointing to him was the red paint found on the victim’s face, Barsini asks, “*Suppose I had chosen a clean rag?*” For the purposes of the plot, this question constitutes a confession. However, students should consider it from the perspective of the defense as well as the prosecution. The two have been having a “thrust and parry” discussion up to this point; could Barsini simply be making conversation, entering into a hypothetical discussion with Columbo? That is, could the words “*Supposing for a moment the truth of your statement that I am the murderer*” arguably be inserted in front of the words “*Suppose I had chosen a clean rag?*” Has Columbo moved from the initial investigatory phase of questioning to an accusatory phase by emphasizing the importance of the red paint?

150. NBC television broadcast, Oct. 10, 1976.

151. A theme touched on in both *Fade In To Murder* (NBC television broadcast, Oct. 10, 1976) and the second series episode *Murder, Smoke and Shadows* (ABC television broadcast, Feb. 27, 1989) is the ease with which the cinema substitutes illusion for reality. In a powerful scene which serves to explain his state of mind, the murderer in *Murder, Smoke and Shadows* demonstrates to Columbo the illusory quality of eyewitness evidence. After considering these episodes, instructors and students alike should appreciate the irony of using *Columbo* as a tool to sharpen the wits of future attorneys. Also consider to what extent an attorney, unlike a police officer, deals in illusion; a successful performance in the courtroom may mean the difference between conviction and acquittal.

152. This remark is directly related to a conversation the killer had with his victim early in the episode, in which they discuss a failed attempt to make the murderer in a television episode a “sympathetic character.”

153. ABC television broadcast, Feb. 27, 1989.

seems more egotistical than insane, the viewer does have some evidence of his mental aberration.¹⁵⁴

Students could discuss what procedures defense attorneys may use to prevent these incriminating statements from being introduced into evidence.¹⁵⁵ Alternatively, what would they do to mitigate the murder charge or plea bargain it to a lesser offense?

7. Inducing the Confession

Planting false or altered evidence is one of Columbo's favorite methods for forcing a suspect's hand.¹⁵⁶ By reversing a photographic image Columbo entices the killer in *Negative Reaction*¹⁵⁷ to supply the evidence that will indict him. The murderer, photographer Paul Galesko, recognizes that the image has been reversed before printing, and goes to the shelf in the property room to retrieve the camera with which the photograph was taken. Inside is the original, unreversed image which gives him his alibi. Unfortunately, since he knows which camera houses the negative, his knowledge goes a long way toward convicting him of the murder. Galesko never confesses, but in order to preserve the man's action as evidence of guilt, Columbo solicits confirmation from each officer in the property room by asking, "Are you a witness to what he just did?"¹⁵⁸

154. While Brady uses light and shadow to demonstrate to Columbo his ability to distort reality or create illusion, the two have the following exchange. Brady: "I'm the substance and you're the shadow. I created you, and I can destroy you. I could vanish you with a word." Columbo: "What word is that, sir?" Brady: "Kill!"

155. How would a defense attorney try to prevent the use of a "voluntary" statement to impeach the defendant's statements on cross-examination? Note that in *Harris v. New York*, 401 U.S. 222 (1971), the Supreme Court allowed the use of pre-trial custodial statements to impeach the testimony of the defendant. "The primary rationale for the decision was the majority's feeling that defendants should not be permitted to testify knowing that prior inconsistent statements could be used against them." WHITEBREAD & SLOBOGIN, *supra* note 43, at § 16.06(b). Another relevant case is *Oregon v. Hass*, 420 U.S. 714 (1975).

156. This is most notable in *A Friend In Deed* (NBC television broadcast, May 5, 1974) and *Negative Reaction* (NBC television broadcast, Oct. 6, 1974). See *supra* part IV.A.2.

157. NBC television broadcast, Oct. 6, 1974.

158. Students might consider how a defense attorney would attack the testimony of these witnesses. Might she suggest that they have ulterior motives for testifying to the actions of the suspect? In any case, she should be able to attack the admissibility of any statement Galesko makes by pointing out that Galesko is technically under arrest at the time. When requested to "come downtown" Galesko initially refuses, and the officer who has come to his home to collect him tells him that if he does not come downtown voluntarily, Columbo will obtain an arrest warrant. The officer issues no *Miranda* warning. In such a case, can Galesko's agreement to accompany the officer be deemed voluntary? Should he have insisted on being arrested?

As in *A Friend In Deed*,¹⁵⁹ Columbo creates an elaborate *mise-en-scene* including the “fake address” technique in *Rest in Peace, Mrs. Columbo*.¹⁶⁰ In this episode he traps the suspect into attempted murder by accompanying her to what she believes to be his home, where she feeds him “poisoned” lemon marmalade. He eats some marmalade and then pretends that it takes effect; while watching what she believes to be his death throes, the woman admits her guilt.

Columbo does manage to frighten Dr. Barry Mayfield into undoing his plan to kill his mentor, Dr. Edmund Heideman, in *A Stitch in Crime*,¹⁶¹ and then retrieves the evidence of Mayfield’s attempt to murder Heideman. The doctor had sewn up his patient using dissolving suture. If it had not been removed promptly and replaced with regular suture, the wound would have reopened, killing the patient.¹⁶² He is foiled only by the fact that Columbo manipulates him into operating again to remove and replace the dissolving sutures. This allows Heideman to escape death but ironically works to Mayfield’s benefit. If Heideman died, Mayfield would be charged with two murders. While he believes that he has gotten away with one murder successfully, a second might raise police suspicions.

a. The Use of Prior Inconsistent Statements

Another device Columbo uses to induce a confession is to demonstrate to the suspect that his prior statements are either illogical or inconsistent with subsequent statements or evidence. He accomplishes this end particularly well in *An Exercise in Fatality*,¹⁶³ in which he demonstrates to the killer that his own statement contains the very information that will

159. NBC television broadcast, May 5, 1974.

160. ABC television broadcast, Mar. 31, 1990.

161. NBC television broadcast, Feb. 11, 1973.

162. Ironically, the act involved is not attempted murder, but the reversal of the murder attempt, since if Mayfield does not operate, Heideman will surely die. Students should be prepared to discuss whether the situation constitutes “withdrawal” and the use of the suture “mere preparation” for the crime, or “attempt,” since the would-be murderer has done everything he can to bring about the death. On the difference between “mere preparation” and “attempt,” see ROLLIN M. PERKINS & RONALD N. BOYCE, *CRIMINAL LAW* 621 (3d ed. 1982) [hereinafter PERKINS & BOYCE]. “It is the well settled rule that there cannot be a conviction for an attempt to commit a crime unless the attempt, if completed, would have constituted a crime.” *Id.* at 622 (quoting *State v. Weleck*, 91 A.2d 751, 760 (N.J. 1952)). On the punishability of “attempt,” see Michael H. Crew, *Should Voluntary Abandonment Be a Defense To Attempted Crimes?*, 26 AM. CRIM. L. REV. 441 (1988); Paul R. Hoeber, *The Abandonment Defense To Criminal Attempt and Other Problems of Temporal Individuation*, 74 CAL. L. REV. 377 (1986).

163. NBC television broadcast, Sept. 15, 1974.

convict him. The killer had maintained that the victim called him at home (long after the man was dead) to say that he was going to exercise before going home and had already changed into his gym clothes. Since no one entered the gym between the time of the conversation and the next morning when the victim was found dead in his gym clothes, no one except the killer could have known that the victim would be found in his gym clothes. "You made yourself a perfect alibi," says Columbo, "and it's your perfect alibi that's gonna hang you."¹⁶⁴

b. Eyewitness Identification; Suspect-Witness Confrontations¹⁶⁵

*Etude in Black*¹⁶⁶ demonstrates some of the problems inherent in pre-trial identification procedures. Columbo brings in a young girl to identify the man she saw entering the victim's apartment. As it happens, she astonishes Columbo by identifying another man, not Columbo's suspect. Asking students to speculate on why he apparently did not show her a picture of the suspect beforehand would force them to consider the public policy as well as the legal reasons a prosecutor would want to guard against the possibility of "tainting" and thus invalidating an identification.

Another episode concerning photographic identification occurs in *Dead Weight*,¹⁶⁷ in which Columbo gives the eyewitness a photograph of the victim, asking her if that is the person she saw murdered. When she

164. He tries the same method in *Negative Reaction* (NBC television broadcast, Oct. 6, 1974). The murderer, a professional photographer, has already alleged that he did not know one of the victims, but Columbo points out that the dead man appears in several of the killer's published photographs. Is this fact convincing evidence that the killer and the victim knew each other? Students could review Federal Rules of Evidence § 607 to analyze the proper use of prior inconsistent statements at trial.

165. The periodical literature on the permissible uses of pre-trial identification as evidence includes PROJECT ON LAW ENFORCEMENT POLICY AND RULEMAKING, EYEWITNESS IDENTIFICATION: MODEL RULES (1974); Benjamin E. Rosenberg, *Rethinking the Right to Due Process in Connection with Pretrial Identification Procedures: An Analysis and a Proposal*, 79 KY. L.J. 259 (1991). On eyewitness identification see Wallace W. Sherwood, *The Erosion of Constitutional Safeguards in the Area of Eyewitness Identification*, 30 HOW. L.J. 439 (1987) See also the influential works by Elizabeth Loftus including ELIZABETH F. LOFTUS & JAMES M. DOYLE, EYEWITNESS TESTIMONY: CIVIL AND CRIMINAL (1987) and ELIZABETH F. LOFTUS & KATHERINE KETCHAM, WITNESS FOR THE DEFENSE: THE ACCUSED, THE EYEWITNESSES, AND THE EXPERT WHO PUTS MEMORY ON TRIAL (1991).

166. NBC television broadcast, Sept. 17, 1972.

167. NBC television broadcast, Oct. 27, 1971.

responds that she is uncertain, he tells her to keep the photograph—it might refresh her memory.¹⁶⁸

These two episodes demonstrate the due process concerns about possible bias in confrontational identifications.¹⁶⁹ A review of relevant scenes in several episodes allows students to discuss the admissibility¹⁷⁰ of such identifications.¹⁷¹ Students should also discuss the due process considerations implicated by “showups” (one-on-one confrontations) and by “lineups” in which the witness has a choice of a minimum of five suspects.¹⁷²

B. *Columbo, Clever Police Work, and Entrapment*

Entrapment has been defined as “when the officer has no ground for suspicion and induces another to commit an offense simply for the purpose of making an arrest.”¹⁷³ While *Columbo* never seems to cross the line

168. While he is not priming her to identify the *suspect*, he clearly indicates that the victim in the photograph may be closely linked to the suspect.

169. See WHITEBREAD & SLOBOGIN, *supra* note 43, § 17.02(b)-(b)(1). See also *Stovall v. Denno*, 388 U.S. 293 (1967); *United States ex rel. Kirby v. Sturges*, 510 F.2d 397, 403 (7th Cir. 1975), *cert. denied*, 421 U.S. 1016 (1975) (one-on-one identification procedures are suspect because of suggestive manner of police in confronting witness with pre-chosen suspect).

170. The admissibility of a pre-trial identification is based on the reliability of the identification (a two-part inquiry), which in turn is based on several factors. See, e.g., *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972) (for the five circumstances comprising the “totality of the circumstances” test). Excessively suggestive identification procedures do not taint identification unless there is “a substantial likelihood of irreparable misidentification.” *Smith v. Perini*, 723 F.2d 478, 482 (6th Cir. 1983), *cert. denied*, 466 U.S. 941 (1984). If the case against the musician in *Etude in Black* (NBC television broadcast, Sept. 17, 1972) had gone to trial, would the presence of so many other orchestra members suffice to negate the inference of suggestive police procedure in pre-trial identification when few if any of the musicians resembled the suspect? On the two-part inquiry, see *United States ex rel. Lee v. Flannigan*, 884 F.2d 945, 948 (7th Cir. 1989), *cert. denied*, 497 U.S. 1027 (1990). See also *Manson v. Brathwaite*, 432 U.S. 98, 114 (1977).

171. Since the state “bears the burden of establishing the presence of counsel or an intelligent waiver by the accused,” while the defendant must prove a violation of due process, students can review the pretrial procedures which would establish admissibility of various pre-trial identifications based on 1) the presence of an attorney; 2) the giving of a *Miranda* warning; and 3) the manner adopted by the police in conducting the pre-trial identification. See WHITEBREAD & SLOBOGIN, *supra* note 43, at § 17.04.

172. Students should also review the MODEL RULES FOR LAW ENFORCEMENT guidelines for lineups. See WHITEBREAD & SLOBOGIN, *supra* note 43, at § 18.02(d).

173. PERKINS & BOYCE, *supra* note 162, at 1163. The distinction in law “is between detection and instigation; traps may be laid or ‘decoys’ employed to secure the conviction of those bent on crime, but the zeal for enforcement must not induce officers to implant criminal ideas in

between entrapment and clever detective work, his interaction with various suspects invites student discussion of the difference between entrapment and clever police work.¹⁷⁴ As discussed above, some of Columbo's favorite devices include misstating facts, lying, or omitting information in order to induce a confession, leading the suspect into false assumptions about Columbo's progress or lack thereof in the case and inducing the suspect to commit another offense or engage in an act that implies guilt.

In one case, *A Friend in Deed*,¹⁷⁵ Columbo plants false evidence in the guise of a suspect's address; only Columbo and the real murderer have access to the address. The murderer, Deputy Commissioner Halperin, goes to what he believes is the suspect's apartment to plant evidence incriminating the suspect. Can the facts support a charge of entrapment? Would the Police Commissioner have broken into the apartment, planted the evidence

innocent minds." *Id.* While "[a]rtifice and stratagem may be employed to catch those engaged in criminal enterprises," *Id.* n.12 (quoting *Sorrells v. United States*, 287 U.S. 435, 441 (1932), the criminal intent must originate in the mind of the defendant. *Id.* (citing *People v. Nunn*, 296 P.2d 813, 820 (Cal. 1956) *cert. denied and appeal dismissed sub nom.* *Nunn v. California*, 352 U.S. 883 (1956), and *reh'g. denied*, 352 U.S. 945 (1956)). See also WHITEBREAD & SLOBOGIN, *supra* note 43, at § 19.01. "Yet the Supreme Court has yet to accord the defense constitutional status. It is conceivable that where the activities of law enforcement officers violate 'fundamental fairness' and shock 'the universal sense of justice,' the due process clause of the Fifth Amendment would justify the defense." *Id.*

The leading entrapment case is *Sorrells v. United States*, 287 U.S. 435 (1932) (government agent prevailed on defendant to sell alcohol in violation of the 18th Amendment). According to Chief Justice Hughes, "[w]e are unable to conclude that it was the intention of the Congress in enacting this statute that its processes of detection and enforcement should be abused by the instigation by government officials of an act on the part of persons otherwise innocent in order to lure them to its commission and to punish them." *Id.* at 448. The defense may not be available in "heinous" or "revolting" crimes. See WHITEBREAD & SLOBOGIN, *supra* note 43, at § 19.01. See also *United States v. Russell*, 411 U.S. 423 (1973) (in which Justice Rehnquist reiterates the justification). Other leading cases are *Sherman v. United States*, 356 U.S. 369 (1958) and *Hampton v. United States*, 425 U.S. 484 (1976).

174. In order to present a successful entrapment defense the defendant must show a lack of predisposition to commission of the crime. Since the future defendants in *Columbo* episodes are all concealing the violent death of another person, their lack of predisposition is at the least questionable. In addition, an officer who has reasonable ground for suspicion that the law is being violated may place himself in a position to apprehend the offenders and may set traps for this purpose. Only if the officer has no ground for suspicion and induces another to commit an offense simply for the purpose of making an arrest does such conduct constitute entrapment. PERKINS & BOYCE, *supra* note 162, at 1163 (citing *State v. Griffith*, 13 Ohio Supp. 53 (Ohio Com.Pl., 1943)). Columbo's problem is usually that he has no clearly articulated grounds for such reasonable suspicions.

175. NBC television broadcast, May 5, 1974.

and obtained the search warrant if Columbo had not dangled the false address and suspect in front of him?¹⁷⁶

The situation in *Requiem for a Falling Star*¹⁷⁷ is a more difficult case, and it results precisely from Columbo's lack of evidence about the guilt of the suspect and all the "things that bother" him. The killer, a fading actress named Nora Chandler, hopes that the death of her victim, Jean Davis, will appear to be a mistake since the woman was driving a car belonging to her lover, Jerry Parks, a gossip columnist with many enemies. However, Columbo hammers on the point that the death was not a mistake and that whoever committed the crime *wanted* to kill Davis, not Parks. In order to reinforce the impression that Parks was the intended victim, Chandler attempts to run him down with her car. This attempt would not have taken place had Columbo not insisted that Davis was the real victim all along.¹⁷⁸ At the end of the episode he tells Chandler, "*I was just playing a hunch. I didn't have any proof. . . I just wanted to see what you would do.*"¹⁷⁹

Having only circumstantial evidence to arrest the suspect, Columbo, in *Death Hits the Jackpot*,¹⁸⁰ arranges to bring his accomplice, the victim's estranged wife, to the scene. Then, he innocently tells her that she is the beneficiary of the winning lottery ticket which was the motive for the

176. See also the discussion of search warrants and voluntary confessions, *supra* parts IV.A and V.A.5. Again, students should realize that a murderer is generally predisposed to commit any other crime to prevent his own capture; thus the "lack of predisposition" defense will nearly always fail before any fact-finder. But they should consider carefully whether a police officer may ever request a search warrant knowing she has inadequate or nonexistent grounds to do so, or whether she should knowingly ever allow another officer to request a warrant based on manufactured evidence. If not, what effect on the validity of the warrant, and on the evidence uncovered?

In *Dagger of the Mind* (NBC television broadcast, Nov. 26, 1972), for example, Columbo makes a point of questioning the deceased's butler about a missing umbrella, suspecting that the butler will repeat the conversation to the guilty parties. Realizing that it could provide evidence of their guilt, they break into a London wax museum in search of the umbrella. Although the culprits certainly did not have the original intention of illegally entering the museum, they are likely to commit almost any crime, including yet another murder, to cover up the original death.

177. NBC television broadcast, Jan. 21, 1973.

178. When informed that Parks has been taken to the hospital and is unconscious, Chandler appears startled; her response to the news is a peevish and abrupt, "*What?*" It could be argued that she really did not intend to hit Parks, and her "*What?*" indicates that her plan has gone awry. However, it is equally possible that she is dismayed that Parks is still alive, although unconscious, since if he recovers he might be able to identify her car.

179. Chandler's motive in killing Davis is the victim's knowledge of the actress' accidental killing of her husband. Nora whacked him on the head with a bottle during an argument, then buried him in the back yard.

180. ABC television broadcast, Dec. 15, 1991.

murder. The knowledge that she will receive the millions while he goes to prison is too much for the killer, who accuses her of complicity while confessing his guilt.

C. Refusal to Confess

On occasion, the culprit fails to confess or behave in a manner that could be construed as incriminating. Two of the weakest *Columbo* episodes involve suspects clever enough to understand that Columbo needs their confessions to convict them, and they fail to oblige. In both *Identity Crisis*¹⁸¹ and *The Most Crucial Game*,¹⁸² Columbo has only circumstantial evidence, a tape of the murderer's voice, linking the murderer to the crime. In both cases the murderer listens with interest to Columbo's reconstruction of the crime without acknowledging guilt.¹⁸³ Clearly they know as much about the law as the good lieutenant, including the attacks that a defense attorney could mount on the available taped evidence. What would a district attorney do with the evidence Columbo has collected up to this point? Is it enough for a search warrant or an arrest? How would a defense attorney counter the prosecution's charges?

In *Caution: Murder Can Be Hazardous to Your Health*,¹⁸⁴ Columbo demonstrates to the suspect why he believes the man is guilty; the culprit's subsequent comment is rueful, but he does not actually confess. The evidence at this point is circumstantial. Columbo has a surveillance tape that clearly was tampered with to give the suspect an alibi, but lacks evidence that the suspect did the tampering. He also has photographs showing claw marks of the victim's dog on the suspect's car. Budding defense attorneys should make fast work of that piece of evidence, since it proves at most that the suspect's car was at the scene of the crime at some

181. NBC television broadcast, Nov. 2, 1975.

182. NBC television broadcast, Nov. 5, 1972.

183. The killer in *Identity Crisis* (NBC television broadcast, Nov. 2, 1975) plants bugging devices in Columbo's home, presumably on the authority of the super-secret agency of which he is a part. Would a claim of national security legalize such an act? Does Columbo have a civil claim against the agency? Against the killer, if he acted improperly? Is Columbo likely to win on such a claim, assuming it should ever come to trial? Less theoretically, would a real-life Columbo be allowed to continue his investigation against a real-life secret agent such as the one in this episode? See Gayle M. Erjavac, *Qualified Immunity For Government Officials—Objective Inquiry Applied to a National Security Motivated Wiretap Halperin v. Kissinger*, 37 DEPAUL L. REV. 53 (1987); Richard G. Kleindienst, *Wiretapping and Bugging For National Security*, 1986 DET. C.L. REV. 1035 (1986).

184. ABC television broadcast, Feb. 20, 1991.

point, not, as Columbo maintains, that the *suspect* was at the scene of the crime.¹⁸⁵

V. CONCLUSION

Through an examination of some of the Fourth, Fifth, and Sixth Amendment legal issues mentioned above, I have suggested topics that instructors might want to review in class with their criminal procedure students. The questions and alternative interpretations posed in the text and notes are intended to make the use of *Columbo* or other film or television programs as easy as possible for the instructor, and offer a supplement to traditional teaching methods, not a substitute for the many well-written casebooks or other materials already available. They and their colleagues can also easily derive many other relevant topics, including the elements of various offenses, the professional responsibility of lawyers, police harassment, the treatment and interrogation of witnesses, and a comparison of the United States and other legal systems from *Columbo* episodes.

Ultimately, of what use are the *Columbo* episodes in the law school curriculum? They offer the student the opportunity to review the requirements for various topics, including warrantless searches, the chain of evidence, entrapment, the *Miranda* decision, and effective detective work. They offer the instructor a possible method of allowing students who might never take a traditional "skills" course the chance to play trial lawyer. They certainly offer more entertainment than is available in most law school courses. Through them, students can examine the classification of the different charges possible against various defendants based on the Model Penal Code, the state's own statutory law (if different) and the common law. For some of the episodes, instructors can broaden the class's range of experience by examining analogous foreign law. Students can discuss their responses as prosecutors and defense attorneys to the various evidentiary problems *Columbo's* antics provide. They can consider whether some of his more idealistic behavior is realistic, given the common charges of police corruption and brutality. They can discuss how or whether they would defend his behavior against the political and social realities they perceive around them.

185. *Columbo* does not issue a *Miranda* warning. Is the suspect under arrest at this point? He is in his office, surrounded by police and arguably would be detained if he tried to leave. If the suspect's comments are viewed as a confession, can the defense attorney keep it out of evidence? See *supra* part IV.A.

Columbo's trademark pestering, his requests for a pencil, his somewhat inane and puppy-dog manner are annoying; at what point might they constitute harassment? Does he use his authority improperly? Is he insensitive to the rights of the suspect? Does he unethically create false evidence to entice suspects into revealing their guilt? What are the implications for a successful prosecution of the suspect? How would a defense lawyer attack his actions? Does Columbo intentionally overlook evidence of other crimes in his zeal to capture murder suspects? If so, what should the prosecutor's attitude be?

Finally, students should consider the various images of the legal system, attorneys, judges, police officers, and other law related professions presented in the series. How would they as district attorneys or defense lawyers explain the system realistically to a client, witness or suspect who accepts the Columbic universe as fact, or to someone who refuses to place any faith in the legal system? How would they justify the system to a cynical suspect or a frightened witness whose testimony is crucial to a case? What responsibility do lawyers have to educate the lay public (including screenwriters) on the legal system? More generally, how can attorneys counteract the power that the mass media, particularly television and the cinema, have to create public misperception, cynicism and fear of the workings of that system?

Uh . . . just one more thing. It's just a detail, but it's been bothering me. I know I'm being a pest, but . . . after more than 20 years on the job, and 60 successful investigations, why is Columbo still just a lieutenant?