CMJ201: EVIDENCE AND PROCEDURE
SPRING 2017

1. Instructor Information:

Assistant Professor Edmond J. O’Brien

Office Location:  Guerrieri Hall, Room 202C

Office Phone Number:  410-572-8757

Office Hours:  Monday:  9:30 AM – 10:30 AM
                5:30 P.M. – 6:30 P.M.

                Tuesday:  10:30 AM – 12:00 PM
                        2:30 PM – 4:30 PM

                Wednesday:  9:30 AM – 10:30 AM
                        5:30 P.M. – 6:30 P.M.

                Thursday:  10:30 AM – 12:00 PM
                        2:30 PM – 4:30 PM

                Friday:  8:00 AM – 4:30 PM
                        By Appointment Only

College E-mail Address: eobrien@worwic.edu

2. Course Level:  200 – Second Year

3. Course Title:  CMJ201  Evidence and Procedure

                Section D01 Guerrieri Hall, Room 203
                Monday and Wednesday:  10:45 A.M. – 12:15 P.M.

                Section D02 Guerrieri Hall, Room 203
                Wednesday:  6:30 P.M. – 9:45 P.M.

5. **Course Description:**

This course examines the principles and techniques of criminal procedure employed during trials to determine the admissibility of physical and testimonial evidence. An analysis of laws and court decisions related to admissibility is emphasized.

“Very little observation of the administration of justice in operation is required to reach the conclusion that it suffers from basic ills.” – Report by the President’s Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967)

6. **Course Objectives:**

Upon the successful completion of this course, the student will be able to:

I. Define evidence and differentiate between the various types of evidence. *(GEO #2)*
   A. List and explain the important differences between direct and circumstantial (indirect) evidence.
   B. Describe the role of circumstantial evidence as corroboration of direct evidence.
   C. List the essential requirements of a “chain” of circumstantial evidence.
   D. Explain the significance of inference and presumptions from evidence.

II. Discuss the significance of proof upon the trier of fact. *(GEO #1)*
   A. Describe the refinement of evidence for use in criminal proceedings.
   B. Define the importance of the admissibility of evidence.
   C. Describe the legal significance of proof in its impact upon the triers of fact (judge or jury).
   D. Define the doctrine of presumed innocence and the requirement of proof beyond a reasonable doubt.
   E. Describe the operation of the two-party system, which distinguishes the American legal system.

III. Distinguish between the responsibilities and duties of the prosecutor,
the defense counsel, the judge, and the jury. (GEO #3)

A. Explain the duties and responsibilities of the prosecutor in preparing accusatory pleadings and in prosecuting persons accused of crime.

B. Outline the circumstances under which prosecutors can decline to prosecute, divert selected defendants from the criminal justice system, or engage in plea negotiations for a reduced charge or sentence in return for a guilty plea.

C. Describe the dilemma of an attorney in defending a client when he/she is convinced of the client’s guilt, explaining defense counsel’s obligation to disprove charges against an apparently guilty defendant.

D. Explain the idea of the adversary system as a structure for the use of evidence to prove guilt or to demonstrate evidence.

IV. Describe tests to determine the competency, relevance, and materiality of the various types of evidence. (GEO #5)

A. Describe case reports and/or court decisions as primary information stored in the records of America’s legal system.

B. Define access routes to case reports and/or court decisions.

C. Define a standard form for briefing court decisions.

D. List the safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law.

E. Describe the judicial review of electronic surveillances and the methods used for surveillances.

F. List the criteria useful in evaluating the admissibility of evidence secured as a result of wiretapping or electronic eavesdropping.

G. Describe and evaluate the trend to require prior judicial approval of electronic surveillances.

V. Describe the process of an orderly trial and the steps leading up to it. (GEO #2, #3)

A. Describe the procedural framework in felony cases from the time of the defendant’s plea, through trial, to judgment and sentence.

B. List the pleas and pretrial options available to the defendant.

C. Define the importance of the “weight” of evidence throughout trial proceedings.

D. Describe the roles of the prosecutor and defense counsel at each stage of the trial proceedings.

All assessment strategies will be through the use of test questions and traffic accident scenarios.

General Education Objectives addressed by this course:

GEO 1: Express ideas effectively through written text.
**GEO 2:** Demonstrate a command of oral communication that is accurate, ethical, and audience-centered.

**GEO 3:** Analyze and/or evaluate texts within and across disciplines.

**GEO 4:** Apply critical analysis and reasoning skills to evaluate evidence and draw conclusions.

**GEO 5:** Access, evaluate, and appropriately use information and technology to accomplish tasks and communicate ideas.

**GEO 9:** Recognize ethical issues in a variety of settings and consider the consequences of alternative actions.

### 7. Course Content:

I. Introduction to the Law of Evidence and the Pretrial Process
   A. Introduction to the Rules of Evidence: Definition of Evidence
   B. The Rules of Evidence
   C. Introduction to the Law of Evidence and the Pretrial Process
   D. Overview of the Court Process; The Pretrial Process
   E. Participants in the Criminal Justice System
   F. The Pretrial Court Process

II. The Trial Process
   A. Jury or Court Trial
   B. The Jury
   C. The Judge
   D. Prosecuting Attorney’s Responsibility and the Burden of Proof Beyond a Reasonable Doubt
   E. Role of the Defense Attorney
   F. Opening Statement
   G. Making the Record
   H. The Prosecution’s Case-in-Chief
   I. Witness Requirements
   J. Examination of Witnesses
   K. Defense Presentation
   L. Prosecution’s Rebuttal
   M. Defense’s Surrebuttal
   N. Closing Arguments
   O. Instructions, or Charge, to the Jury
   P. Deliberation and Verdict
   Q. Sentencing the Defendant

III. Evidence - Basic Concepts
   A. Describing Evidence
   B. Judicial Notice
C. Presumptions
D. Burden of Proof
E. Stipulations

IV. Witnesses - Competency and Privileged Communications
A. Who is a Competent Witness?
B. Privileged Communications
C. Husband and Wife Relationship
D. Parent - Child Privilege
E. Attorney - Client Privilege
F. Physician - Patient and Psychotherapist - Patient Privileges
G. Clergy - Communicant Privilege
H. Identity of Informer Privilege
I. Accountant - Client Privilege
J. News Reporter - News Source Privilege

V. Witnesses - Lay and Expert
A. Becoming a Witness
B. Lay, or Ordinary, Witnesses
C. Expert Witness
D. Refreshing Recollection

VI. Credibility and Impeachment
A. Credibility
B. Basic Methods of Impeachment
C. Contradiction
D. Bad Character for Truthfulness
E. Prior Inconsistent Statements
F. Bias or Motive to Falsify
G. Witness Incapacity
H. Impeachment: Other Issues
I. Self-Incrimination

VII. The Hearsay Rule
A. Rational for the Rule and Constitutional Considerations
B. Components of the Hearsay Rule
C. Statement that Are Not Hearsay Because They Are Not Offered for the Truth and Matter Asserted
D. Hearsay Exceptions
E. Specific Hearsay Exceptions
F. Statements Made Under Sense of Impending Death (Dying Declarations)
G. Declarations Against Interest
H. Spontaneous Utterances: Present Sense Impressions and Excited Utterances (a.k.a. Res Gestae)
I. State of Mind
J. Former Testimony
K. Business and Public Records
L. Pedigree, or Family History
M. Past Recollection Recorded: Only Read into the Record

VIII. Opposing Party’s Statements (Admissions) and Confessions
A. Opposing Party’s Statements (Admissions) and Confessions Generally
B. Opposing Party’s Statements (Admissions)
C. Confessions - General Principles and Considerations
D. Confessions Excluded Due to Violation of Due Process of Law: Coerced Confessions
E. Exclusion of Confessions Due to Violation of Rights Secured Under *Miranda v. Arizona*
F. Exclusion of Confessions Due to Violation of the sixth Amendment Right to Counsel
G. Confession Given After An Unlawful Search and Seizure May Be Excluded
H. The Continued Importance of Confessions as Evidence
I. Procedure for Introduction of Confessions
J. Wording of Confessions
K. Confession Implicating a Codefendant
L. Proof of the Crime in Addition to a Confession - The Requirement of *Corpus Delicti*

IX. The Exclusionary Rule - Search and Seizure
A. What is the Exclusionary Rule?
B. The Scope of Search and Seizures
C. What is a Search?
D. What is a Seizure?
E. Ways of Making a Reasonable Search and Seizure
F. Search Pursuant to a Search Warrant
G. Reasonable Searches Without Warrant: Exceptions to the Warrant Requirement
H. Search and Seizure on Less Than Probable Cause: Stop and Frisk and Reasonable Suspicion in Other Circumstances
I. Suspicionless Stops and Searches: The Special Needs Exception to the Probable Cause and Warrant Requirements
J. Objecting to the Introduction of Evidence Claimed to Be Illegally Seized

X. Exclusionary Rule - Identification Procedures
A. Identification Procedures and the Exclusionary Rule
B. Identification Procedures and the Right to Counsel
C. Identification Procedures and Due Process
D. Types of Suggestive Identification Procedures
E. Determining the Reliability of a Suggestive Identification: The Five Factors of the *Biggers* Case

XI. Circumstantial Evidence
A. Direct Evidence versus Circumstantial Evidence
B. Admissibility of Other Crimes, Acts, or Wrongs
C. Means or Culpability to Commit a Crime
D. Consciousness of Guilt
E. Character of Victims
F. Character of Witness

XII. Documentary Evidence and the Right of Discovery
A. Documents as a Kind of Evidence
B. Authentication
C. Best Evidence Rule
D. The Right of Discovery in Criminal Cases
E. Discovery Through Preliminary Hearing
F. Growth in the Right of Discovery
G. Pretrial Discovery
H. Prosecution’s Right of Discovery
I. Defendant’s Right to Original Investigative Notes and Recordings

XIII. Physical Evidence
A. What is Physical Evidence?
B. Sources of Physical Evidence
C. Connecting Object with Issues at Trial: Chain of Custody, or Possession
D. Marking Objects for Identification
E. Storage of Physical Evidence
F. Delivering Physical Evidence
G. Preparation of Physical Evidence for Use in Court
H. Gruesome Objects
I. Physical Objects Not Produced in Court
J. Viewing of the Crime Scene by the Jury

XIV. Photographic, Recorded, and Computer-Generated Evidence
A. Photographs, Recordings, and the Like as Evidence
B. First Rule of Admissibility - Foundation for Relevance
C. Second Rule of Admissibility - Foundation for Authentication
D. Posed Photographs and Video Recordings
E. Methods of Presentation in the Courtroom
F. Consideration of Other Matters
G. X-Ray Photographs

XV. How to Testify Effectively
A. The Law Enforcement Professional’s Role
B. Problems of the New Professional: Notification to Appear
C. What to Do Before the Trial
D. What to Wear to Court
E. Where to Appear and What to Do
F. Conduct Before and During the Court Session
G. On the Witness Stand
H. After Testifying
I. Review Case After Verdict

8. Class Schedule and Reading Assignments:
| Week #1      | Course Orientation; Chapter 1 |
| Week #2      | Chapter 2; Chapter 3          |
| Week #3      | Chapter 4; Chapter 5          |
| Week #4      | Chapter 5; **Quiz #1 (Chapters 1-4)** |
| Week #5      | Quiz #1 Critique; Chapter 6   |
| Week #6      | Chapter 7; Chapter 8          |
| Week #7      | Chapter 9; **Quiz #2 (Chapters 5 – 8)** |
| Week #8      | SPRING BREAK – NO CLASS       |
| Week #9      | Quiz #2 Critique; **MID TERM EXAM** |
| Week #10     | Exam Critique; Chapter 10     |
| Week #11     | Chapter 11; Chapter 12        |
| Week #12     | Chapter 13; **Quiz #3 (Chapters 9 – 12)** |
| Week #13     | Quiz #3 Critique; Chapter 14; Chapter 15 |
| Week #14     | Course Review; **Quiz #4 (Chapters 13 – 15);** |
| Week #15     | Quiz #4 Critique; **FINAL EXAM, Wednesday, April 26, 2017, 10:00 A.M. - 12:00 P.M. and 6:30 P.M. to 8:30 P.M.** |

9. **Evaluation and Grading:**
Two examinations (mid-term and final) and four quizzes will be given at appropriate intervals. Test questions will be based on the texts, Power Point presentations, and lecture material. The final examination is comprehensive and includes information covered throughout the semester. Exams are expected to be taken during their scheduled times.
Make-up Exams – Make-up exams will only be permitted for legitimate reasons and must be taken within one week of the originally scheduled date. Students must contact the instructor in advance if unable to take a quiz or an exam. If not, the student will receive a zero for the exam. Final exams must be taken when scheduled because final grades must be submitted to the registrar within 24 hours.

Grading will be as follows:

A = 90% - 100%
B = 80% - 89%
C = 70% - 79%
D = 60% - 69%
F = 0% - 59%

Weighting will be as follows:

- Quizzes: 20%
- Mid Term Exam: 30%
- Writing Assignment: 10%
- Electronic Assignment: 10%
- Final Exam: 30%

10. Writing assignments:

Description and Instructions:

1. Students will be required to write and submit answers to the Ethical Dilemma section from five chapters in the text.

2. Papers must be word processed and include a cover sheet with the student’s name, date, course number and semester. Text should be single-spaced with one inch margins using a 12 font.

3. Students must support their answers. A simple “yes” or “no” will not suffice.

4. Assignments are due no later than the date of the final examination on Wednesday, April 26, 2017.

Grade Weight and Scoring:

This assignment is worth 10% of the final grade, and will be graded on content, organization, grammar, and research.
Scoring Rubric: Electronic Assignment

Content: 60%
Grammar, punctuation, and style: 20%
Organization: 10%
Research (APA) 10%

Writing Center

The Reading and Writing Center is located in MTC204. You may seek writing assistance from a qualified instructor in the Reading/Writing Center. These “drop in” conferences are available on a “first-come, first-served” basis during the regular hours of the Reading and writing Center, so do not wait until the last minute to seek writing assistance. Come prepared with your original assignment and a printed copy of your written work. Center hours are: M&Th. 8:30-6:30; T&W: 8:30-8:00; F: 10:00-1:30; Sat 10:00-1:00. Do not wait until the day before an assignment is due to seek assistance.

11. Electronic Assignment:

Description and Instructions:

1. Students will be required to write and submit five legal briefs on five separate appellate court decisions.

2. Students should electronically research legal web sites in the selection of an appellate court decision, a determination of the facts of each case, the basis for the appeal, and the reason(s) for the appellate court decision.

3. Papers must be word processed and include a cover sheet with the student’s name, date, course number and semester. Text should be single-spaced with one inch margins using a 12 font.

4. Do not submit copies of the actual appellate decisions.

5. Assignments are due no later than the date of the final examination on Wednesday, April 26, 2017.

Format:

Each written legal brief must include the appellate decision cited, at least three electronic legal web sites researched, and must be based on the following format:

1. Title of the case cited

2. The facts of the case
3. The basis or reason for the appeal, which must be stated in the form of a query.

4. The appellate court’s decision

5. The reason(s) for the appellate court decision.

**Grade Weight and Scoring:**

This assignment is worth 10% of the final grade, and will be graded on content, organization, grammar, and research.

**Scoring Rubric: Electronic Assignment**

<table>
<thead>
<tr>
<th>Component</th>
<th>Weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Content</td>
<td>60%</td>
</tr>
<tr>
<td>Grammar, punctuation, and style</td>
<td>20%</td>
</tr>
<tr>
<td>Organization</td>
<td>10%</td>
</tr>
<tr>
<td>Research (APA)</td>
<td>10%</td>
</tr>
</tbody>
</table>

**Example:**

A sample legal brief would be developed by reading the appellate court decision, and then summarizing the case as follows:

**Case:** Argersinger v. Hamblin, 407 U.S. 25 (1972)

**Facts:** In a Florida state court, unrepresented by counsel, this indigent petitioner was convicted by a judge, and not a jury, of a weapons charge and sentenced to 90 days in jail.

**Issue:** Does the Sixth Amendment right to counsel for indigent defendants apply to criminal trials on petty offenses?

**Decision:** No person may be imprisoned for any offense – petty, misdemeanor, or felony – unless represented by counsel at trial, unless a knowing and intelligent waiver is made.

**Reason:** Problems associated with misdemeanors and petty offenses often require legal counsel to ensure a fair trial for the accused.

**References:** List three electronic sources for the aforementioned case using APA format.

12. **Laboratory/Internship/Practical/Field Experience/Clinical Experience, Etc.**

Not Applicable.
13. **Academic Honesty Policy:**

Students must comply with the standards of conduct mandated by college policy as outlined in the Appendix of the college catalogue. Any student caught plagiarizing or cheating on an assignment in violation of that policy will not receive credit for that assignment. Discussions will occur before penalties are given. At the discretion of the instructor, the student may also be referred to the Student-Faculty Disciplinary Committee.

**Classroom Etiquette**

Please place all cell phones and other electronic devices on “silent” or “vibrate” mode before class. Text messaging in the classroom is not permitted. If it is necessary to immediately respond to an electronic message, please leave the classroom, make your response, and return to class. No side conversations or other distracting behaviors will be tolerated during class. Please respect others by being polite and considerate.

**Attendance**

Students are expected to attend class and be on time. If the student is absent, excused or unexcused, more than 5 times for a day class, or 3 times for a night class, the Dean of Students will be advised. If arriving late, please minimize disruption to the class.

14. **Emergency Information Statement:**

In the event of a flu epidemic or other emergency that results in the suspension of classes, faculty will be communicating with students about their courses and course requirements, such as assignments, quiz and exam dates, and class and grading policies, via Blackboard. Students will be responsible for completing all these assignments in accordance with class policies. Information about the resumption of classes will be communicated via the College’s website and email system.

15. **Blackboard Statement:**

**Use of Blackboard in Course**

Blackboard is being used as a supplementary site in this course. To access course content in Blackboard you need to have access to a computer with an internet connection (other requirements may apply). Computers that meet these requirements are available on campus in the Maynard Technology Center (MTC...
200), the Academic and Administration Building (AAB 217), Henson Hall (HH 100), Guerreiri Hall (GH 204), the Workforce Development Center (WDC 305), and the Allied Health Building (AHB 108).

Please follow these directions to gain access to the course syllabus, Power Point presentations, and study guides:

**Login Information**

1. From the Wor-Wic home page, point to “Quick Links” (top-right) and click the “Blackboard Login” link.

2. Enter your Wor-Wic user ID and password (same user ID and password login that is being used for My Wor-Wic portal and Web Adviser). **If you do not know your Wor-Wic user ID and password, contact Student Services.**

3. You should then see a list of courses in which you are currently enrolled. Click on the course link for CMJ 201.

4. Find and click on the folder for the course resource you are looking for; i.e., course syllabus, Power Point presentations, study guides, etc.

**Academic Integrity and Computer Usage Policy**

All students logging into Blackboard affirm that they understand and agree to follow Wor-Wic Community College policies regarding academic integrity and the use of College resources as described in the college catalog. Wor-Wic considers the following as violations of the usage policy:

1. Using the campus computer network and facilities to violate the privacy of other individuals.

2. Sharing of account passwords with friends, family members, or any unauthorized individuals.

Violators are subject to college disciplinary procedures.

**16. Course Evaluations:**

The College has selected SmartEvals as its vendor to conduct online end-of-course evaluations. SmartEvals maintains the highest level of security with the evaluation information, and the information resides only on SmartEvals' computer servers. Faculty are unable to identify individual evaluations, and any data which has the potential to reveal the identity of a student (i.e. the only male in a class) is blocked from viewing. You will receive automated emails from SmartEvals reminding you to complete your evaluations, and the timing of the emails is in compliance with anti-spam guidelines. The emails discontinue once all of your evaluations are completed. You will be able to access the evaluations through the link in the SmartEvals email or
by clicking on “course evaluation” in the left menu of your Blackboard course website. The evaluations are only active during designated times at the end of the semester. Disable the pop-up blockers on your internet browser in order to access the evaluation. Your cooperation in completing the online evaluation at the designated time is greatly appreciated. The results from the course evaluation provide valuable feedback to your instructor in order to make changes as needed with curriculum and teaching. Please direct any questions about the online course evaluation system to Hope Ellis at hellis@worwic.edu.

**Course Evaluation Dates:** Begin: April 10, 2017   End: April 24, 2017

**17. Services For Students with Disabilities:**

Wor-Wic Community College provides reasonable accommodations for students with disabilities, in compliance with the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. If you are in need of accommodations, please contact the counseling office at (410) 334-2900. For more information, see Wor-Wic's Services for Students with Disabilities web page.

**18. Criminal Justice Club**

The purpose of the club is to provide Wor-Wic Community College students with more information on the different career choices in Criminal Justice, and to help network with those who are already working in the field of Criminal Justice, as well as those who are considering careers in Criminal Justice fields. It is also intended as a way for students to keep in touch with issues and current events that have a direct relation to Criminal Justice, and to expand students’ knowledge in different specialized areas that pertain to Criminal Justice.

Membership in the Criminal Justice Club is **open to all** students at Wor-Wic Community College who have enrolled in credit classes. There are two types of membership. One is a general membership that allows students to attend meetings and participate in club events, and the other is a voting membership. The requirements for the voting membership are that a student must attend at least three Criminal Justice Club meetings, and that a student must volunteer for at least one Criminal Justice Club event.

Current members of the Criminal Justice Club Executive Board are **Molly Weschler** (President), **Donna Johnson** (Vice-President), **Ryan Wilkinson** (Treasurer), and **Charlene Wilson** (Secretary). Ed O’Brien is the faculty advisor. Nominations for new Executive Board officers will take place in March 2016 and an election will be held in April 2016.

Open meetings are usually held every other Tuesday from 4:30 P.M. to 5:30 P.M. in Room 203 of Guerrieri Hall. Our first meeting for the Spring 2016 session will be on Tuesday, January 26, 2016. Recent guest speakers at club meetings during the Fall
2015 session were Chief Barbara Duncan of the Salisbury Police Department, Corporal Mance McCall of the Maryland Natural Resources Police, Police Officer Matthew McFarlane and Police Officer Gary Cooper of the Ocean City Police Department, and Corporal Dale Trotter of the Worcester County Sheriff’s Office. At most of our meetings, we usually have free pizza, bread sticks, and soft drinks, so please make an effort to stop by.

During the Fall 2015 session, the club also sponsored field trips to Eastern State Penitentiary in Philadelphia, PA, and the 9/11 Memorial Museum in New York City, NY.

Below is a link to the Wor-Wic Community College Criminal Justice Club Facebook page: https://www.facebook.com/#!/groups/253411124677805/. Keep in touch and stay informed about upcoming meetings, activities, and field trips. The Criminal Justice Club is an organization of Wor-Wic Community College students for Wor-Wic Community College students, and we encourage you to post your thoughts, ideas, and suggestions.

19. On Your Mark ...

Class time will involve both lecture and class discussions covering subjects in the text and outside materials. Students are expected to complete all assigned reading prior to class and be prepared to ask or answer questions regarding the material covered. Students are expected to participate actively in class discussions, attend all classes, and be on time. Regular attendance and participation are the best ways to ensure your success in this course.

If a student experiences any course-related problems throughout the semester, he/she should feel free to contact me at any time. The student may call, send an e-mail, stop by my office, or meet with me before or after class. I look forward to working with you this semester.