

**The Handbook for the Courses**

**Thesis I (Law 498) and Thesis II (Law 499)**

**2008-2009**



**Department of Law**

**United States Military Academy**

**West Point, New York**

## **Table of Contents**

I. Prerequisites and Course Structure	2
II. Course Administrative Memorandum	3
III. Assignments and Due Dates	5
IV. Form of the Thesis, Thesis Drafts, and Assignments	7
V. Citation Rules	8
VI. Grading Guidelines	10
VII. Sample Evaluation Letter from Faculty Advisor to Cadet	12
VIII. Publication Outlets for Cadet Theses	14

## **I. Prerequisites and Course Structure**

### **A. General Requirements**

The Thesis requirement for cadets who wish to major in Law and Legal Studies consists of two three-credit courses, one in the fall semester and one in the spring semester of the senior year. The basic prerequisites and course structure are outlined below.

1. Credits: The thesis program involves two courses, Thesis I and Thesis II (Law 498 and Law 499). The Thesis I course is offered in the fall semester, and the Thesis II course is offered in the spring semester.
2. Eligibility: These courses are open only to First Class cadets or to cadets who have the approval of the Department Head.
3. Prerequisites: The prerequisites for this course are: Law 310 and Law 403.
4. Lessons: None. Regular meetings with faculty advisors are required.
5. Labs: None.
6. Special Requirements: While cadets may be required to attend a small number of organizational conferences, they will not be required to attend classes. Instead, they will meet individually with their faculty advisors. From time to time, seminars will be organized, and cadets are encouraged to attend. Cadets must submit assignments to their advisors.

### **B. Research: Sources and Citations**

The Thesis courses are designed to allow cadets to explore any relevant area of study. Cadets must conduct significant research using primary sources. Primary sources are those containing an original document, such as a legal “Reporter” that contains a court case, a “Code” that contains a statute, or a copy of the Federal Constitution.

Even a useful source on the internet will have its genesis in a primary document, such as a statutory code. You must access and cite that primary document only. For example, you might find a case on the internet, such as a U.S. Supreme Court case through Lexis. Even then, what you are reading is the Supreme Court case, which is a “primary” source. You must cite from the Court’s official reporter (U.S. Reports), not from the Lexis internet address on which the Court’s case is found. An internet address will often not be an acceptable citation reference for two main reasons. First, scholars must learn how to find and interpret primary sources. This ensures that your analysis is based on an actual authority, such as a Supreme Court case, not on someone’s opinion about that authority or an internet publisher’s copy of that authority, which might not be an accurate copy. Second, internet addresses change frequently. Primary sources do not change. The reader of a cadet thesis can always find a primary source. But, an internet address that someone cites today might be gone tomorrow.

Note, also, that long quotations (more than fifty words) in a thesis are usually not acceptable. You may use a quotation from a primary source as an abbreviated method to buttress one of your points. In the exceptional instance when a quotation is longer than fifty words, the quotation should be in block form (indented) so as to notify the reader of the excessive reliance on a quotation.

### **C. Recommended Course Book**

The following book is recommended. It is Academic Legal Writing. The author is Eugene Volokh, and the publisher is Foundation Press; 395 Hudson Street; New York, New York 10014; (877) 888-1330. The book’s ISBN is: 1-58778-477-7.

## **II. Course Administrative Memorandum**

### **A. Purpose of the Thesis**

The purpose of the Thesis courses is to provide cadets with the opportunity to create a project that represents a superior level of research, analysis, creativity, and scholarship. Through the project that results (a high quality paper of at least 40 pages of narrative writing), cadets will be expected to show how their knowledge and understanding have developed.

Cadets will produce such high quality work as a Thesis paper, an article, a conference presentation, or another approved scholarly project. The Thesis courses are designed to constitute a “capstone” experience to a cadet’s academic career through which the cadet will, in part, make a transition from a cadet/student to an officer/leader/professional.

The Thesis courses will allow cadets the opportunity to pursue and reflect upon any appropriate academic interest. The Department of Law wants to promote in cadets methods of thinking and analysis that will lead to the exercise of good judgment and problem solving, in regard to both legal and non-legal issues. Each cadet will work with a faculty advisor. The faculty advisors will help guide cadets in developing and furthering professional behavior, demeanor, work habits, and work product.

### **B. The Role of the Faculty Advisor**

Each cadet will work with a faculty advisor, who is a professor and/or officer in the Department of Law. The role of the faculty advisor is to serve as mentor and instructor for the cadet. The faculty advisor will guide the cadet through the thesis process. Cadets are encouraged, but not required, to seek an advisor with whom they would like to work. Generally, prior to beginning the thesis project, cadets should feel free to speak with faculty members in the Department of Law to determine whom they might ask to serve as their faculty advisor and/or panel members for the oral defense of their Thesis. To the extent possible, cadets and faculty members with similar interests and experiences might wish to consider working with each other. If cadets do not seek an advisor, the course director will assign the cadet to work with an advisor. The cadet’s faculty advisor is responsible for evaluating the work and project of the cadet and assigning a final grade in consultation with the Department. However, the cadet must initiate every aspect, assignment, draft, and inquiry involving the thesis process.

### **C. Faculty Evaluation of Cadets and Grading**

This section contains the general grading guidelines. [Please see page 10 for the specific grading guidelines.] Every cadet must complete every assignment in a timely and acceptable fashion. The cadet must complete each assignment, submit it to the faculty advisor, and receive a grade of “Complete” on it before the cadet may submit further assignments. For example, the cadet’s first assignment is to complete a Thesis Proposal, which should be designed so as to obtain approval of the cadet’s topic. If the faculty advisor assigns a grade of “Incomplete” to this assignment, the faculty advisor will not review additional cadet assignments until the prior assignment merits a grade of “Complete.” [A grade of complete should not be interpreted as constituting work that equates to a certain letter or number grade.] The maximum number of points each semester is 100.

Every cadet must submit a final Thesis of at least 40 pages of narrative (the cadet’s own writing). [A quotation is not a cadet’s writing.] Cadets may propose alternative projects of similar quality and length. An example of an alternative project would be the presentation of a paper at a professional

conference. For alternative projects, cadets must obtain the approval of the faculty advisor, the course director, and the Head of the Department of Law.

In determining the cadet's grade, the faculty advisor will consider the overall quality of the Thesis (and/or drafts); assignments; the form and content of the Thesis; the grammar, organization, and mechanics of the writing and the Thesis; the oral presentation and defense; the timeliness of the cadet's submissions of assignments; the quality of the assignments; and other factors that are relevant to evaluating the progress and performance of the cadet. Because each Thesis is unique, cadets should expect that faculty advisors will require cadets to meet additional requirements. All cadets must submit all materials to their faculty advisors prior to 1600 on the Due Dates, which are noted in section III.

At the end of the first semester, cadets will receive a grade (valued at 3 credits) based on the substance and quality of the Thesis Proposal; the oral presentation (which is different from the oral defense); the literature review; the outline; the bibliography; and the first 10 pages of the Thesis. At the end of the second semester, cadets will receive a grade based on their work in the second semester, which includes but is not limited to drafts of the Thesis, the final Thesis, and the oral defense.

The final Thesis, every Thesis draft, and every assignment must meet the requirements of section VI below and the requirements of any other applicable section.

#### **D. Dropping a Thesis course**

Any cadet who wishes to drop a Thesis course must speak with her or his advisor and the course director and receive written permission from the department head. The cadet dropping a course must personally process any paperwork through the course director, the department academic counselor, and the Dean's Office. All drops must confirm to the rules of the Dean, and cadets are responsible for knowing the rules.

#### **E. Human and Animal subjects**

When researchers work with humans or animals they must present their research plan to an institution's review board for evaluation and approval prior to conducting any work with humans for animals. If such an issue arises, please see the faculty advisor and the course director. More information on the West Point policy can be found at: <http://www.usma.edu/opa/hsrrb/index.htm>.

### III. Assignments and Due Dates

Except for any meetings called as needed by the course director, cadets will not be required to attend regularly scheduled meetings or classes. Nonetheless, each faculty advisor may require individual conferences to evaluate the cadet's progress and offer guidance. However, if a faculty advisor does not require regular meetings, cadets are always free to schedule meetings themselves. Cadets are responsible for submitting all assignments and scheduling all meetings, oral defenses, and oral presentations and for meeting all deadlines.

If they decide not to schedule regular or additional meetings with their advisors, cadets should be aware that their decision not to do so might have significant academic consequences. For example, cadets who fall behind might not be able to complete the Thesis and will thus not be eligible to receive a major in the Department of Law. In some circumstances, cadets will not be eligible to graduate if the credits from the Thesis course are needed to meet the total number of credits required for graduation. All USMA rules apply to the Thesis course, such as rules regarding: documentation; the dropping of courses; maintaining the proper number of credits per semester; meeting the requirements of the major; and meeting graduation requirements, among any other applicable rules. The faculty advisors will presume that cadets who have advanced to the level of a Thesis course are capable of completing the Thesis and meeting deadlines, which are the reasons why cadets have significant responsibility for and discretion in determining how they approach the Thesis course.

Please note the following assignments and due dates below. Submit all materials to your faculty advisor prior to 1600 on the dates noted below. (The due dates are in parentheses.)

- A. **Thesis Proposal and Topic Approval (29 August):** Each cadet must obtain approval for the thesis topic from the faculty advisor by completing a Thesis Proposal of at least 2 pages in length. The Thesis Proposal must contain the following components:
1. A preliminary title for the Thesis.
  2. A definition of what advances to the field of law and/or legal studies the cadet anticipates the Thesis will make.
  3. A hypothesis about what the cadet expects to discover. [In conducting research, the cadet should examine material that both supports and refutes the hypothesis.]
  4. A plan for conducting a literature review.
- B. **Oral Presentation (Cadets contact thesis advisors and complete by 12 September):** Cadets must schedule with their faculty advisors a presentation at which cadets will orally present to their advisors and at least one additional professor (chosen by the faculty advisor) a description of their progress on the Thesis so as to obtain final approval for their topics. The cadet must schedule the time and place of the presentation.
- C. **Literature Review (26 September):** The literature review is a 2-page or greater summary and analysis about what cadets believe their preliminary research shows. The Literature Review must contain the following components:
1. A description of the most significant research in the topic area.
  2. The research questions that remain unanswered.
  3. The type of research and research methods and designs that have proven effective in this area.
  4. A description of what issues will be addressed in the Thesis.
  5. How the resolution of these issues will advance knowledge.
- D. **Outline (10 October):** Submit an outline of at least 3 pages. The outline must contain a proposed title for the Thesis; section headings; and sub-section headings. The outline should be

prepared using precise sentences that describe what is contained within the Thesis, the sections, and the sub-sections.

- E. **Bibliography (17 October):** Submit a bibliography of all sources that have been found in the cadet's research. These sources need not necessarily be included in the final Thesis, but each source must be noted in the Bibliography. Of course, more sources will be found and cited as work on the Thesis progresses. Note: the final Thesis has no bibliography.
- F. **First ten pages of Thesis (First draft) (09 December):** At a minimum, submit the first 10 pages of your Thesis. This submission must be proper in form and substance under section IV. While it is likely that these 10 pages will be revised next semester, these 10 pages and every assignment in the fall semester will provide the basis for the grade for the first three credits of the Thesis.
- G. **Second draft (06 February):** Submit a 20-page draft that reflects the faculty advisor's comments and suggestions on the first ten pages and extensive additional research and revision by the cadet. This submission must be proper in form and substance under section IV.
- H. **Third draft (06 March):** Submit the first 30 pages or more of the final Thesis. This third draft reflects comments made by the faculty advisor on the second draft. This submission must be proper in form and substance under section IV.
- I. **Fourth draft (17 April):** Submit a minimum of 40 full narrative pages (cadet writing) in proper form. This final draft must reflect the faculty advisor's comments on the third draft. The 40 pages do not include the Title page, Table of contents, graphs, appendices, charts, or any other material that is not the cadet's writing. Narrative means 40 full pages of cadet writing. [Quotations do not count toward the 40 pages.] Double space everything. Do not start new sections on new pages—simply double space down from the last sentence or heading of the previous section. This submission must be proper in form and substance under section IV.
- J. **Oral Defenses (30 April):** The purpose of the Oral Defense is to allow each cadet an opportunity to defend his or her work before a professional audience. The faculty members and/or other scholars who review the Oral Defense will be evaluating the quality of the cadet's work and also suggesting additional avenues of scholarship and research, should the cadet wish to continue work on his or her project.

It is the responsibility of the cadet to schedule the time and place of the Oral Defense; arrange for other faculty members to attend the Oral Defense; and provide copies of the Thesis to the other faculty members and the course director.

Prior to the Oral Defense, the faculty advisors will notify cadets of the procedures to be employed during the Defense and indicate to cadets what will be expected of them. Generally, the Oral Defenses will:

1. Be no longer than 55 minutes in length.
2. Consist of four parts: the cadet presentation; faculty questioning of the cadet; faculty feedback for the cadet; and a faculty conference (in the absence of the cadet) to discuss the cadet's Thesis and Oral Defense and final grade.

#### **IV. Form of the Thesis, Thesis Drafts, and Assignments**

The form of the Thesis, Thesis drafts, and the assignments must meet the following guidelines. The Dean's documentation policy applies in all circumstances.

1. The Thesis drafts and every assignment must include a cover page that contains the cadet's name; the name of the faculty advisor; the title of the assignment; the name and number of the course; and the date on which the cadet submitted the Thesis draft or assignment. Submit each assignment in hard copy form.
2. Number every page of the Thesis, Thesis drafts, and assignments at the bottom, center section of each page, except the Title page and Table of Contents. Do not number the Title page and Table of Contents.
3. Every Thesis draft and assignment must meet page requirements or limitations. A letter grade may be deducted from a Thesis that is short of 40 full narrative pages. The Title page and Table of Contents may not be counted as part of the 40 full narrative pages.
4. The spacing must be double spacing—everywhere—no exceptions. Do not start new sections or chapters (or anything) on new pages. Simply double space down from the last word of a prior sentence.
5. The font (including any material in bold) must be 11 or 12 point. The type of font must be Times New Roman.
6. In citing to sources, use footnotes that appear at the bottom of the page where the reference to the source appears. [Except as may be required by the Dean's documentation policy, no citations of any kind should appear at the end of the Thesis.] Do not include a bibliography in the Thesis or the Thesis drafts.
7. The margins on each piece of paper must be 1 inch on all sides. Type on only one side of each piece of paper. For example, the last punctuation mark of the last footnote on a page must be one inch from the bottom of the page. The page number must be midway between the bottom of the page and the last punctuation mark of the last footnote on a page.
8. Binding the Assignments and the Thesis:
  - a. Assignments (including the Thesis drafts): Use staples or metal clips.
  - b. Thesis (Final draft): Use a "Brown Bomber."
9. The components that the Thesis must contain include:
  - a. A Title page.
  - b. A Table of Contents.
  - c. A minimum of five section headings; the first and last sections should take the form of an introduction and a conclusion.
  - d. Each section may contain two or more sub-sections.
  - e. The Thesis must not contain any other component.
11. Submission of the Thesis: Each cadet must submit 5 copies of the Thesis, in "Brown Bomber" form, to her or his thesis advisor.

## V. Citation Rules

### Introduction

The official citation manual for this course is The Bluebook: A Uniform System of Citation, which is published by The Harvard Law Review Association: Cambridge, Massachusetts. You do not need to purchase this manual if you are able to cite all your sources correctly using the guidelines noted below. However, if the guidelines do not apply to a particular source you have found, then you must cite to your source according to the rules in The Bluebook. If you have a question about citation form, please consult with your faculty advisor. All citations must be in the form of footnotes at the bottom of the page on which the reference to the source occurs.

### Specific Forms

#### A. The United States Constitution and State Constitutions

1. U.S. Const. art. I, § 9, cl. 2
2. N.M. Const. art. IV, § 7

#### B. Federal and State Statutes

1. U.S. Code
  - a. 5 U.S.C. § 555 (1994)
  - b. 5 U.S.C.A. § 555 (1994)
2. State statutes
  - a. N.C. Gen. Stat. § 1-181 (1990)
  - b. NEB. Rev. Stat. §18.501 (1989)

#### C. Treaties

Treaty of Friendship, Commerce and Navigation, Apr. 2, 1953, U.S.-Japan, art. X, 4 U.S.T. 2063

**D. Cases (Court opinions):** Case citations must include (in the following order) the name of the case, the volume number, an abbreviated title of the reporter, the page number, and, in parentheses, the abbreviated name of the court and the date.

1. United States Supreme Court: *Duncan v. Kahanamoku*, 327 U.S. 304 (1946). (Note: In deviating from the usual form, the name of the “Supreme Court” is not listed in the parentheses of the citation).
2. United States Court of Appeals: *Katcoff v. Marsh*, 755 F.2d 223 (2d Cir. 1985).
3. United States District Court: *Korematsu v. U.S.*, 584 F.Supp. 1406 (N.D. Cal. 1984).
4. United States Court of Appeals for the Armed Forces: *United States v. Jones*, 43 M.J. 1 (1995). (As with a citation to the United States Supreme Court, the name of the highest military appellate court is not listed in the parenthesis.) Until 5 October 1994, this court was named the “United States Court of Military Appeals.” Citations for cases decided prior to the name change will continue to use the prior citation form. *United States v. Pritchett*, 31 M.J. 222 (C.M.A. 1990).

5. Army Court of Criminal Appeals: *United States v. Smith*, 42 M.J. 410 (Army Ct. Crim. App. 1995). Other military courts of criminal appeals are cited in the same way, except that the courts are abbreviated as follows: A.F. Ct. Crim. App. (Air Force), C.G. Ct. Crim. App. (Coast Guard), and N.M. Ct. Crim. App. (Navy-Marine). Until 5 October 1994, these courts were named courts of military review. Citations for cases decided prior to the official name change will continue to use the prior citation form. Thus, cases decided by the Army Court of Military Review are cited as follows: *United States v. Lewis*, 6 M.J. 581 (A.C.M.R. 1978). The other courts of military review are abbreviated as follows: A.F.C.M.R. (Air Force), C.G.C.M.R. (Coast Guard), and N.M.C.M.R. (Navy-Marine).
6. State Case: *Jupiter v. State*, 198 N.Y.2d 234 (N.Y. App. Div. 1991).
7. Short Form Case Citations. Once a case has been fully cited (see the paragraphs above), you should use the following shortened citation form: *Katcoff*, 755 F.2d at 228.

#### **E. Military Statutory and Regulatory Law.**

1. Uniform Code of Military Justice: UCMJ Art 31.
2. Military Rules of Evidence: Mil. R. Evid. 313(b).
3. Rules for Courts-Martial: R.C.M. 304.
4. Department of Defense Directives: DOD Dir. 5400.7-R
5. Army Regulations: AR 635-200, para. 1-17.

#### **F. Code of Federal Regulations.**

EPA Hazard Ranking System, 40 C.F.R. § 300 (1991). Short Form: 40 C.F.R. § 300.

#### **G. Frequently Used Secondary Sources.**

1. Legal Encyclopedias
  - a. Corpus Juris Secundum: 88 C.J.S *Trial* § 192 (1955).
  - b. American Jurisprudence: 17 Am. Jur. 2d *Contracts* § 74 (1964).
2. American Law Reports Annotated.
 

*Annotation, Use of Plea Bargain or Grant of Immunity as Improper Vouching for Credibility of Witness in Federal Cases*, 76 A.L.R. Fed. 409 (1986).
3. Law Review Articles.
 

Lorianne M. Campanella, *The Regulation of “Body Art” in the Military: Piercing the Veil of Service Members’ Constitutional Rights*, 161 Mil. L. Rev. 56 (1999).

**H. Further Information:** Consult The Bluebook, your faculty advisor, or the course director.

## VI. Grading Guidelines

### Purpose

The purpose of the Thesis grading guidelines is to encourage cadets to produce theses of the highest possible quality, to suggest uniform grading standards, and to create expectations about how theses might be evaluated—while recognizing that each thesis project is unique and maintaining a maximum amount of flexibility for cadets and faculty to work together. In arriving at a final grade, faculty advisors may consider the complexity of the thesis topic, how the theses reflect the abilities and effort of individual cadets, how the theses reflect cadets' progress in the Thesis course, and, most importantly, the quality of the Thesis.

### A Range

This Thesis contains almost all of the most relevant or controlling authority in the area discussed in the Thesis. For example, if the Thesis focuses on the constitutionality of “three strikes” sentencing laws, the Thesis should contain the most recent relevant cases from the U.S. Supreme Court and other relevant courts, as well as relevant social science research, if applicable. A Thesis in the “A” range should have virtually no misspellings and no typographical or usage errors. Sentences should be complete, concise, precise, and clear. The headings should illustrate what is beneath the headings. The organization should be clear, the paragraphs should be of proper length for the point being made, and the arguments should be logical. The citation form should be proper in virtually every respect. The Thesis in the “A” range is a pleasure to read. It provides the reader with information, logical analysis, and fresh perspectives. This Thesis is of the highest quality.

### B Range

This grade reflects a Thesis that contains the characteristics of an “A” grade but lacks the quality of an “A” grade. For example, with significant editing, this Thesis could compare favorably with a Thesis that receives a grade of “A.” This Thesis would contain most relevant legal authority and social science research, reflecting the cadet's perseverance and focus, but might not contain reasoning that is compelling or organization that is clear throughout the Thesis. This Thesis would contain proper sentences and grammar, although the points within sentences and paragraphs and headings might not be as clear as those contained in an “A” Thesis. In some places, this Thesis may be difficult to read because of organization or reasoning faults. However, as a whole, this Thesis can be read and understood with little difficulty.

### C Range

This Thesis contains the most, but not all, relevant authorities. For example, this Thesis would contain a leading U.S. Supreme Court case from the past (*Miranda v. Arizona*), but it would not contain more recent federal and state cases, which might discuss how to apply a rule from the prior leading Supreme Court case. This Thesis would be readable, but its sections might not build upon each other. For example, this Thesis might seem to contain several short term papers that add up to 40 pages (the required narrative length of the Thesis). The reader might feel as though he or she is reading an encyclopedia-type article, one that contains information but not analysis. The reader of this Thesis should be able to understand the cadet's main point, or thesis argument, but might be left thinking that the reasoning does not really support some of the main points, either because relevant authorities are missing or the writing, reasoning, or organization is unclear. The reader would be left asking for much more research or analysis to support the main points. This Thesis should be generally “readable,” but it might sometimes seem confusing because of writing errors and/or a lack of clear organization within paragraphs and sections.

### D Range

This grade reflects work that is barely acceptable. Based on its substantive quality, this Thesis might normally fall in the C range, except that this Thesis lacks one requirement of the Thesis course. For example, the lack of a requirement might include but is not limited to: a Thesis that is less than 40 full narrative pages; an inappropriate citation format; the absence of the most relevant legal or scholarly authority; submitting the Thesis late; or submitting more than one assignment late. Any one of the above shortcomings might cause the final grade on the Thesis to be reduced one letter grade.

### F Range

This grade reflects the standards indicated for a “D” grade, except that an “F” Thesis might contain two or more of the shortcomings noted in the “D” Thesis. In general, an “F” Thesis is one that is unacceptable because of form, substance, or writing, or because of inadequate preparation prior to submitting the final Thesis.

## VII. Sample Evaluation Letter from Faculty Advisor to Cadet

The following letter is an illustration of how a faculty advisor might evaluate the work of a cadet in the Thesis course. Copies of cadets' theses from past years are contained in the Department of Law library. This is the type of letter that a faculty advisor might write to a cadet to explain the reasoning behind the grade for the Thesis course.

### Sample Evaluation Letter

Re: Thesis titled "The Implications of Releasing Sex Offenders from Prison"

Final Thesis Grade: C+ (77 points: out of a maximum of 100 points)

Dear Cadet,

Please find contained in this letter my comments about your work in Thesis course. I very much enjoyed reading your Thesis and working with you.

### Comments on the Form of the Thesis

Your Thesis was well-written and very well-organized. The logic behind your organization was clear, and you anticipated in your headings the questions that a reader might have. The Table of Contents was clear and detailed.

However, the paragraph structure was sometimes confusing because several main points were confined to one very long paragraph. Instead of using one long paragraph, several shorter paragraphs would have helped provide precision and detail to your main points. Shorter, more precise and detailed paragraphs and sentences would have helped the reader identify and focus on the main points, which sometimes got lost in the long paragraphs.

### Comments on the Substance of the Thesis

Generally, your reasoning was logical, but the reasoning lacked support in research, which was the main limitation of the Thesis. Most of the meaty research for the Thesis came from only two sources—the Hendricks case and the Journal for the Examination of Sex Offenders. Thus, the logic of your points was minimized, because there were few studies and not one other legal case mentioned to support the reasoning in the Thesis. To make points more convincingly, the Thesis needed research in regard to: how states without civil confinement laws deal with offenders, such as whether the states provide for more severe criminal sentences; whether social scientists and/or psychiatrists can ever predict future dangerousness; why five years is a long-enough time for civil confinement; and whether research shows that upon reaching a certain age a sex offender will commit no further crimes.

Unless a researcher can show that society can identify with some degree of reliability whether a sex offender is likely to re-offend, there is no need for guidelines for juries in civil commitment cases. That is, if we cannot determine who will re-offend, we should just release every sex offender at the end of his sentence on the theory that he has served his time, or never release any sex offender on the theory that, because we cannot predict who will commit sex offenses in the future, all sex offenders should receive very long sentences, or possibly life sentences, to protect society.

The problem of the lack of a definition of mental abnormality coming from the Hendricks case has been taken up by other courts, but the Thesis did not contain any discussion of cases decided after Hendricks. Your discussion of the Hendricks case was generally good. But, because in the Thesis you wanted to go

far beyond the reasoning in the Hendricks case—by developing a definition for the requirements of civil confinement for juries based on prior research of professionals—much more research into additional cases and social science studies, especially in regard to the concept and predictability of “dangerousness,” was needed.

The test you arrived at to determine civil commitment was reasonable, but some of the logic was unclear to me. With the first part of the test, why would civil commitment apply to only “repeat” and the most violent inmates? Doesn’t the government want to imprison them early on so as to prevent them from having the opportunity to commit a repeat crime? After all, because sex offenders are great recidivists, we know from only one conviction that they might have committed many other sexual assaults for which they were not caught, and that they are very likely to commit many sexual assaults in the future if they are left in the community. Nonetheless, in recommending commitment after two convictions, I do recognize that you were balancing societal needs with the needs of individuals convicted of crimes. And you quite rightly tried to suggest a fair position—in terms of when (after two convictions) an offender should be civilly committed.

The second part of the test, the requirement that confinement be for treatment, is already a requirement of the Supreme Court, from the Hendricks case.

With regard to the third part of the test, confinement for a maximum of five years, why only five years? Why not confinement until the inmate’s condition of pedophilia ends? If the sex offenders are great recidivists, why should society stop confinement at five years? Maybe five years is enough time, but such a statement needs support from psychological, sociological, and other studies. Thus, the reader is left looking for corroboration of your conclusions, which is one reason why the Thesis seems short on research.

#### Comments on the Oral Defense of the Thesis

With regard to the oral defense, you were organized and responded well to questions. However, the answers were sometimes very general because there was a lack of research to support many of the points in the oral defense and the Thesis.

#### Summary of Comments

Overall, the Thesis covered a very important topic. You identified the relevant issues and organized them very clearly. More research was needed in regard to every point. The Thesis was very easy to read. Mechanical errors were minimal. I learned a lot from your work, but, as I said during the oral defense, because the topic was very interesting and important, I really wanted to see more of your work, such as additional research and analysis to support your positions. Finally, congratulations on the completion of the Thesis course.

I am very glad to have had the opportunity to work with you, and I wish you all the best.

Sincerely,

Faculty Advisor

## VIII. Publication Outlets for Cadet Theses

Law and Society Association (student writing competition)

<http://www.lawandsociety.org/>

American Society of Criminology (student writing competition)

Pamela Lattimore  
Crime, Justice Police and Behavior Program  
Research Institute Triangle  
P.O. Box 12194  
3040 Cornwallis Road  
Research Triangle Park, NC 27709-2194  
919-485-7759 (p) 919-485-7700 (f)  
[lattimore@rti.org](mailto:lattimore@rti.org)

Dartmouth College Undergraduate Journal of Law

<http://rockefeller.dartmouth.edu/students/dcujl/>

The Journal of Legal Studies [Air Force Academy not currently publishing this journal.]

Department of Law  
United States Air Force Academy  
USAF, CO 80840-6248  
<http://www.usafa.af.mil/dfj/journal.html>

Legal Writing Competitions (all areas of law)

<http://mason.gmu.edu/~llederma/WritingAwards.htm#Constitutional>