

# Genocide and US Indigenous Peoples

## An inspiration for Hitler

By Jim Craven

"Hitler's concept of concentration camps as well as the practicality of genocide owed much, so he claimed, to his studies of English and United States history. He admired the camps for Boer prisoners in South Africa and for the Indians in the Wild West; and often praised to his inner circle the efficiency of America's extermination—by starvation and uneven combat—of the 'Red Savages' who could not be tamed by captivity."

(Adolf Hitler, by John Toland, p. 702)

The term *genocide* was coined by the Polish jurist Raphael Lemkin. It originates from the Greek *genos* for race and from the Latin *cide* for killing. But if one sees genocide strictly in terms of the literal meaning or roots of the word, one can lose sight of the realities of cases where genocide is still going on.

Rarely does genocide involve the total and complete extermination of a whole group. Taking the literal meaning of the word can lead to the erroneous conclusion that genocide has not occurred if any members of a targeted group remain in existence. But genocide can be a slow process, involving first the destruction of the way of life of the dominated group, followed by imposition of controls by the dominating group. This has clearly been the pattern in US history regarding Indian peoples.

The US refused to sign the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide for forty years—until 1988—and is still not in compliance as a result of an asserted "Sovereignty Exemption." In other words, the US claims that it cannot be accused of genocide for events that occur inside its sovereign territory (precisely what the German Nazis asserted at Nuremberg in 1946).

When we compare the definition of genocide with the reality of the history and current situation of Indians in the US, there can be no doubt that they are continuing victims of genocidal policies. Historically, the stated policy of the US government has been to eliminate Indians, as this quote from Bureau of Indian Affairs documents suggests:

"Set the blood-quantum at one quarter, hold to it as a rigid definition of Indians, let intermarriage proceed... and eventually Indians will be defined out of existence. When that happens, the federal government will be finally freed from its persistent In-

dian problem." (quoted in P. Limerick, *The Legacy of Conquest*, p.338)

Defining an "Indian" by the "blood quantum" definition, when no other people are defined in this way, is a racist attempt to eventually define Indians out of existence. Poverty, disease, and despair on the reservations, along with the sterilization of women and the removal of children from their families, still practiced in many parts of the US, contribute to the genocide that is continuing to kill Indians. In addition, the policies of the Bureau of Indian Affairs, which gives great authority to so-called tribal "leaders" who are corrupt and oppose democratic action by reservation Indians, continue practices that have been shown to lead to declining populations and the inability of Indian peoples to maintain their communities and cultures.

A Plea: For all those moved to stand against the ongoing genocide being committed against Indigenous Peoples in the Americas—and everywhere—and wish to lend whatever assistance they are able, please contact Representa-

tives of the Sovereign Blackfoot Nation at (toll free) 1-866-965-2969 or <jcraven@clark.edu>.

Jim Craven, Solicitor General of the Blackfoot Nation and Professor of Economics and Chair of the Business Division at Clark College, Vancouver, Washington, recently spoke in Sacramento.

## Racist Imagery



Julius Streicher, editor of the Nazi propaganda paper *Der Sturmer*, was hanged—properly—at Nuremberg for "complicity in genocide" through his racist/anti-Semitic polemics and caricatures that served to "dehumanize" and facilitate genocide. The US Prosecutor at Nuremberg observed that those powers sitting in judgment of Nazis at Nuremberg were forever morally and legally binding themselves to the same standards they were applying. (from *Indians Are Us?* by Ward Churchill)

## Genocide in Indian Country: The law and the reality

By Jim Craven

### International Law on Genocide

Article II of the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide defines any one of the following five acts as constituting genocide:

Killing members of the group  
Causing serious bodily or mental harm to members of the group

Deliberately inflicting upon the group conditions of life calculated to bring about its physical destruction in whole or in part

Imposing measures intended to prevent births within the group

Forcibly transferring children of the group to another group

### Genocide in America

Compared with the overall incidence in the US (already the highest among 22 industrialized countries) Indians suffer rates of deaths from influenza and pneumonia 3 times higher, tuberculosis 4 times higher, deaths from exposure 5 times higher, strep infections 10 times higher, deaths from malnutrition 12 times higher, meningitis 20 times higher, dysentery 100 times higher, and youth suicide rates 1,000 to 10,000 times higher.

Average life expectancy among

reservation-based men is 44.6 years (versus 71 years for white males) and for reservation-based women 47.5 years (versus 74 years for white females).

One in four Native men is in prison, on probation or on parole.

Almost 40% of Native women of childbearing age have been subjected to involuntary sterilization.

Some 57,000 Indian homes are officially considered uninhabitable.

On one list of 73 proposed toxic waste sites, 72 were Indian reservations.

Only Indians are subject to "blood-quantum" tests for recognition by the US government.

Indian children are routinely targeted for forced or deceptive adoptions to non-Indian families by government and private agencies.

Indian children are routinely sent to religious boarding schools for de-Indianization and forced assimilation and religious conversion.

(Source: *Fantasies of the Master Race*, by Ward Churchill, p. xiii)

## Books on Indians in America

*The State of Native America: Genocide, Colonization and Resistance*, by James, M. Annette (ed), South End Press, 1992.

*A Little Matter of Genocide: Holocaust and Denial in the Americas 1492 to Present*, by Ward Churchill, City Lights Books, 1997.

*Fantasies of the Master Race: Literature, Cinema and the Colonization of American Indians*, by Ward Churchill, City Lights Books, 1998.

*Indians Are Us?: Culture and Genocide in Native North America*, by Ward Churchill, Common Courage Press, 1994.

*The Struggle for the Land: Indigenous Resistance to Genocide, Ecocide and Expropriation in Contemporary North America*, by Ward Churchill, Common Courage Press, 1993.

*Custer Died For Your Sins: An American Indian Manifesto*, by Vine Deloria, University of Oklahoma Press, 1988.

*American Holocaust*, by David Stannard, Oxford University Press, 1993.

*Exiled in the Land of the Free: Democracy, Indian Nations and the US Constitution*, by Oren Lyons and John Mohawk (eds), Clear Light Publishers, 1992.

## Indian Casinos

Who really wins big?

By Jim Craven

Many people think that the situation for American Indians is now greatly improved through casino gambling, and that in fact most Indians are now rich. The reality is starkly different. The poverty rate for American Indians is more than twice the poverty rate for the whole US population, with almost one-third of American Indians living on incomes below the official government poverty line. So who really benefits from gambling?

Out of every dollar of gross profit at typical "Indian-owned" casinos:

51¢ goes to "investors" like Harrah's

31¢ goes for licensing, consultants, taxes, etc.

5¢ goes to the Bureau of Indian Affairs

5¢ is skimmed off by "Tribal Aristocrats"

Leaving only 8¢ for programs that actually benefit Indian people.

# Culture of entitlement greatest threat of all

Empires past and present ultimately have faced greater threats from internal forces and contradictions than from external ones. So is it true for America.

The celebrated Zeitgeist of the 1980s accelerated and even celebrated forms of rat-race individualism, self-indulgent narcissism, myopic short-run thinking and greed, crude jingoism and national chauvinism, narrow religious dogmatism and bigotry, unproductive paper-chasing speculation, blind cut-throat competition, super-power arrogance and hypocrisy, and cultures of entitlement and contentment and narcissism. These forms of behavior and thinking threaten the fabric, stature, competitive posture and dynamism of American society far more than anything that could be produced in Iraq or the former Soviet Union.

There is an old popular saying: "Everybody wants to go to heaven but nobody wants to die." So often:

- Those who frequently travel 200 miles by car in three hours whine about the taxes that are necessary to build and maintain the highways on which they travel.

- Defense contractors whine about fraud and abuse in the welfare system while engaging in forms of fraud and abuse far greater than anything possible in the welfare system.

- Big businessmen celebrate the virtues of capitalism and competition while rigging jobs and contracts for which there was no open competition.

- The "government-is-evil"

## Seattle getting a risky alternative to 'Dr. Death'

James M. Craven

### An economist's view

crowd quickly runs to agencies of the state to obtain and enforce contracts, socialize the costs of the privatized/centralized profits, bailout mismanaged corporations or when their own personal safety is threatened.

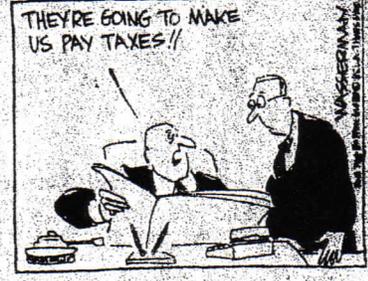
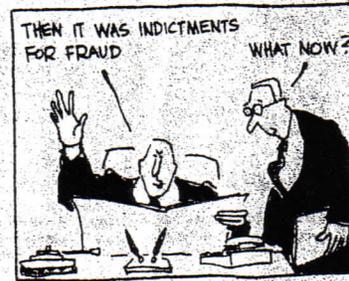
- Those who complain about workers who lack proper education and skills take no personal interest in the education of their children and whine about the taxes necessary for state-of-the-art education.

- Large corporations demand tax concessions to locate and generate jobs in a given region, only to summarily leave that region when their tax concessions have run out.

- Forces that argue for the right to life of the fetus turn around and oppose, under the banner of parental authority, laws intended to protect children from child abuse, homelessness and hunger.

- Corporate leaders and the economically well-off complain about low levels of productivity while at the same time channeling scarce resources into leveraged buyouts and short-run, paper-chasing speculative activities that do nothing to improve — and, in fact, help to sabotage — the productive base of the economy.

- Those who celebrate the need for excessive salaries to compensate for risk turn around and demand that the state insure with taxpayer dollars their own multiple huge bank accounts, thus eliminating their own risks.



- Workers complain about lack of job security and yet fail to take personal responsibility for and continue their own learning and skill upgrading.

- Those who preach the loudest about family values push comfortable bumper-sticker solutions and simplistic populist tax-and-spending propositions — such as Initiatives 601 and 602 — that can only contribute to fiscal child abuse, the long-term legacies of massive deficits/debt.

At the threshold of the 21st century, in an increasingly interdependent, dangerous, multipolar and highly competitive global political economy, we are at a critical crossroads of history. There will be more and more snake-oil salesmen telling us that we can indeed have it all and have it now. Those who received the vast majority of the tax cuts in the 1980s will return and — through organizations that appear to be populist, armed with large sums of PAC money and sophisticated technologies of persuasion — will bring in another Trojan horse of tax cuts for the rich masquerading as tax

cuts for all.

The new snake-oil salesmen will tell us that deficits/debts are not really all that bad as a percentage of gross domestic product and that in any case only tax cuts for the wealth creators can and will — though they haven't yet — produce a rising tide that will lift all boats and ultimately reduce deficits/debt. They will preach the virtues of free trade in the open while in the back rooms they will be lobbying for their own special subsidies and forms of protectionism.

Bertolt Brecht summed up the dangerous mentality of the cultures of entitlement, contentment and narcissism:

"Those who take the most from the table, teach contentment; those for whom the taxes are destined, demand sacrifice; those who eat their fill, speak to the hungry of wonderful times to come; those who lead the country into the abyss, call ruling difficult for ordinary folk."

James M. Craven is a professor of economics at Clark College.

## OP-ED

A page for other views

# The Tao of crisis

## Midwest flooding offers lessons

The thoughts and wisdom of the ancient Taoists of China provide some powerful concepts that can be meaningfully applied when considering the devastation, the misery, the consequences and the lessons from the flooding in the Midwest.

In classical Mandarin Chinese, two characters are used to form what would in English mean "crisis" or "critical turning point." The first character means "danger" and the second character means "hidden opportunity." The second character can also be taken to mean "organic complexity" or "natural evolutionary change."

The ancient Taoists meant to convey by this the notion that every crisis holds both danger and opportunity — the potential for a critical turning point for society, for social thinking and for social action. They understood that to fully appreciate the hidden opportunity as well as the danger in every crisis, there must be an appreciation of the organic complexities and intricacies of systems — as opposed to simplistic, unidimensional thinking and slogans. And they understood that crises were inevitably a consequence of and a force for natural evolutionary change.

One important lesson from the floods can be summed up with the popular phrase "penny wise and pound foolish." Cities like Davenport, Iowa, had several opportunities to build levees that could have mitigated considerable destruction from flooding. On several occasions in various areas severely affected by previous as well as present flooding, initiatives to build levees were thwarted for reasons of preserving "scenic views" and avoiding the increased taxes that would have been required. Short-run mental myopia, simplistic populist initiatives and narrow greed triumphed.

Some of those same individuals — the ones who carried the banners that said "the least government is best" and "no tax increases for whatever purpose" — are now running to the state to mobilize resources for reconstruction and to socialize costs and their individual losses. Some flood victims interviewed by journalists have openly admitted to owning expensive RVs, boats and what have you, but no flood insurance. From this crisis, these individuals now have an opportunity to reconsider their past priorities and assumptions.

A second lesson from the floods has to do with the dangers of the partisan politicizing of agencies such as the Federal Emergency Management Agency and using such agencies as dumping grounds for political cronies. The past director of FEMA, Louis O. Giuffrida, appointed by President Reagan, openly stated that his agency's top priority was preparation for protracted nuclear war with the Soviet Union, that such a war could be "won" and would be consistent with the preservation of civilization. In an interview with ABC News, Giuffrida said that the

James M. Craven

### A professor's view

aftermath of thermonuclear war "would be a terrible mess, but it wouldn't be unmanageable."

Giuffrida's assistant, William Chipman, when asked if democracy and other American institutions would survive an all-out nuclear war with the Soviet Union, stated: "I think they would eventually, yeah. As I say, the ants eventually build another anthill."

Such statements exemplify the priorities as well as the caliber of the individuals who have led FEMA in the past. During the 1980s, the agency typically allocated roughly \$12 toward preparations for thermonuclear war for every \$1 allocated toward preparations for natural disasters. The infrastructure and flexible response capabilities necessary for dealing with natural disasters were simply not properly developed. There will be widespread and long-term misery and costs that could have been mitigated had the warnings and lessons from previous flooding been heeded and had agencies such as FEMA been staffed on the basis of demonstrated expertise and vision as opposed to political connections.

Yet another lesson from the flooding has to do with the role of government in society. We all know of cases of gross abuse, mismanagement, imperial overreach, arrogance and waste in government. In response we often hear calls for blanket tax cuts, dismantling of government and privatization. Yet out of the present disaster in the Midwest we also see evidence of rapid and comprehensive responses by governmental agencies that would not be possible from the private sector, given its narrow and short-term-oriented formulas of profitability. Free enterprise is celebrated as the only answer to big, wasteful and abusive government, yet free enterprise's need for profit is precisely what made flood insurance unaffordable for or unavailable to many.

Out of the misery and devastation caused by the floods in the Midwest emerge both dangers and opportunities. If we retreat to some of the usual forms of short-term thinking, greed, egoism and selfishness, we shall surely face increasing danger and widespread consequences in the future. If we gravitate toward simplistic anti-government or anti-taxation initiatives — analogous to decapitation as a way to remove a brain tumor — we will surely face future crises without the necessary capabilities.

If we keep doing what we've always done, we'll keep getting what we've always got.

James M. Craven is a professor of economics at Clark College.



HEAD IN THE SAND

# Supply-side economics is paint-by-numbers art

By James M. Craven

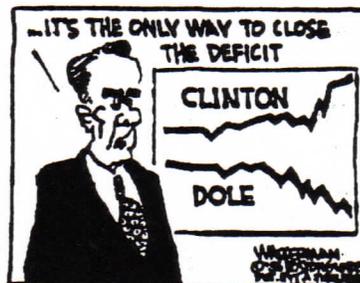
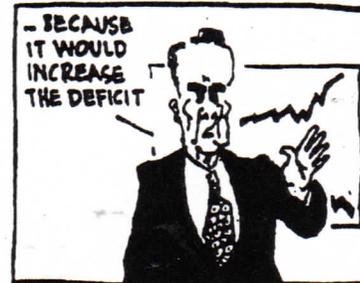
In 1983, David Stockman, then Ronald Reagan's director of the Office of Management and Budget, was taken to the proverbial woodshed by the president and his advisers. Stockman's serious error was to reveal very private conversations and the real intentions of core aspects of so-called "Reaganomics" to writer and economist William Greider.

Stockman had revealed that Reagan's proposed "across-the-board" tax cuts constituted a "Trojan Horse." Their real intention was to make tax cuts and/or abolitions of certain taxes on forms of property income (capital gains, interest, dividends and rents) more politically acceptable. Stockman told Greider that the Reagan administration was well aware that the real beneficiaries of such policies would be the top 20 percent of the nation's wealth and income holders, and that administration officials didn't believe their own rhetoric.

Stockman's second revelation was even more damaging. He revealed that another leg of this "Trojan Horse" was a design to deliberately cause short-term declines in revenues that would force cuts in certain social safety net programs. It was assumed that the political will — even among Republicans — did not exist to cut these and other programs.

Reagan's so-called "supply-side economics" made many promises. One promise was that tax cuts would actually increase revenues through a smaller tax bite on a much much bigger GDP pie being taxed. And when Stockman discovered that the OMB computer projected steadily rising deficits, he was told to "reprogram the computer and change the program's basic assumptions."

In addition to rising revenues, tax cuts were supposed to stimulate savings. A higher national savings rate was supposed to bring down real interest rates. Lower real interest rates were



supposed to stimulate real investment, which would stimulate employment and productivity. Expanded productivity was supposed to reduce inflation rates and then stimulate increased U.S. competitiveness abroad, which would reduce U.S. trade deficits and stimulate economic growth. "A rising tide" was supposed to "lift all boats," bringing generalized prosperity not to just a select few — in other words, painless prosperity.

The probable results of these simplistic prescriptions were obvious. Only 12 of 18,000 members of the American Economic Association signed on to the notion that supply-side economics had any serious merit.

In 1983 the United States was the largest net creditor country; by 1986 the United States had become the largest net debtor country in world history. Twelve out of twelve budgets submitted by the Reagan and Bush administrations involved higher proposed spending and deficit levels than were subsequently passed by Congress. The national rate of saving fell to the lowest among the industrialized countries. The rate of growth of manufacturing productivity rose only marginally. Trade and federal budget deficits steadily rose and moved in parallel.

From the Mayflower through President Carter, combined

deficits added up to approximately \$962 billion; more than three times this amount was added to the national debt in 12-year period of the Reagan-Bush years. Wealth and income inequalities steadily widened, with the United States becoming No. 1 in wealth and income inequality among 19 industrialized nations. Instead of precious savings being channeled into productivity-enhancing investment, they were channeled into junk bonds and other financial devices that virtually do nothing for enhancing productivity and competitiveness.

The new proposals by GOP presidential candidate Bob Dole and others represent more than just "Deja Voodoo." This is 1996, not 1981, and due to the previous supply-side actions and other factors, we have even less margin for error than before. In today's highly interdependent and integrated economy with myriad gimmicks and sheltered financial opportunities that do virtually nothing for employment, output, productivity and competitiveness, the supply-side prescriptions are especially dangerous and simplistic.

So-called supply-side prescriptions are to serious economics and policy what painting-by-numbers is to art. Only the desperate — for simplistic solutions to complex problems, or to be elected — would embrace or preach such folly.

JAMES M. CRAVEN is head of the economics department at Clark College.

## PRESIDENT'S MESSAGE (cont.)

The benefits I have received from my active involvement in the Oregon Legal Management Association seem never-ending. I have developed lasting friendships with bright, funny, caring colleagues. I have improved (although certainly not mastered) leadership skills such as negotiation, organization, patience and risk-taking; however, Mary Sauer will attest to the fact that I am still a terrible procrastinator (I'm always the last one to submit my newsletter article). I have broadened my perspective beyond my own firm. And I think I have learned to be cool and gracious under fire.

I cannot tell you what a true pleasure it has been for me to share a leadership role with such fine, industrious, hard-working people as the members of the Board. I thank them all!

Next year will be an exciting year. Choose to become involved. The rewards await you.

## SOME ELEMENTS OF CRITICAL THINKING - "Separating the Pepper from the Fly Droppings"

by James M. Craven

At the heart of the scientific method is critical thinking. By critical thinking we mean all those time/results-tested rules and processes for delineating, analyzing and predicting the essential features, dynamics (processes and patterns of change) and consequences of phenomena—ultimately for the purpose of transforming and controlling those phenomena and their effects. Critical thinking involves separating out what is really being argued or implemented--as opposed to appearances. Critical thinking also involves understanding sources and errors of bias; it also involves analyzing by whom, for whom, for what purposes, on what basis or authority and with what probable costs and benefits is something being argued or implemented.

Critical thinking is not about simply trashing sacred icons, traditions, institutions and beliefs for the fun of it. Yet critical thinking may and often does, lead to undermining or challenging sacred beliefs and institutions as new theories, facts, data and reasoning processes emerge, are established and ultimately replace the old. Science proceeds funeral by funeral as old "facts", beliefs, traditions and institutions die and are buried and replaced by new ones.

Of course not all of the profound questions related to human existence can be handled through processes of science and critical thinking. Some profound questions are by their nature "metaphysical" and therefore unanswerable through empirical or scientific methods. Yet we receive proof every day that science and the scientific method work: as we take a medication that produces the intended results; as we fly on an airplane and arrive at our intended destination (with or without our baggage) alive and on schedule, etc. Critical thinking produces empowerment as it helps a person in being progressively more able to differentiate: style from substance, rhetoric from reality, appearance from essence, falsehoods from truths, sophistry from sound reasoning, contrived "data" from facts, "the pepper from the fly droppings."

In human society as in nature, every potential blessing is also a potential curse and vice versa. For example, many of the macroeconomic forces that operate to reduce unemployment also operate to increase inflation. And so it is with critical thinking; that which is a potential blessing can also become a curse if not properly handled. When one experienced in critical thinking hears patently racist, sexist, national chauvinistic or other forms of absurd arguments, that person can become isolated, alienated, intolerant, angry and antagonistic, arrogant or depressed. We should never forget that each person is a teacher and each person is a student. We should never forget that learning critical thinking, essential to and like education in general, is a lifetime process. We should never forget that even the most able in the area of critical thinking, often lapse into non-

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An Interview with Beverly Michaels, MBA Placement Director & Associate Executive Director

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## CRITICAL THINKING (continued)

critical thinking in accordance with various interests and passions. There is a popular saying in southern India: "For the little frog in the well, the sky is as big as the opening of the well." We all live in various kinds of wells.

### Some Elements of Critical Thinking

1. DIFFERENTIATING BETWEEN FACT AND OPINION
2. RECOGNIZING AND EVALUATING AUTHOR BIAS AND RHETORIC
3. DIFFERENTIATING CORRELATION AND CAUSALITY
4. DETERMINING ACCURACY/COMPLETENESS OF INFORMATION
5. RECOGNITION OF LOGICAL FALLACIES AND FAULTY REASONING
6. CONTRASTING/COMPARING INFORMATION AND PERSPECTIVES
7. DEVELOPING INFERENTIAL AND DEDUCTIVE SKILLS
8. MAKING JUDGMENTS AND DRAWING LOGICAL CONCLUSIONS
9. CONTEXTUAL AND INSTITUTIONAL CHALLENGES
10. EXISTENTIAL CHALLENGES

### DIFFERENTIATING BETWEEN FACT AND OPINION:

1. A fact is a statement about a phenomenon that has been proven true repeatedly by experimentation, prediction and other verifiable facts.
2. Question: What externally verifiable information has been presented that suggests a statement or assertion to be true or false?
3. Question: How does the author differentiate between the interpretation of information and the presentation of established facts and data?

4. Question: What rules or techniques can be used to identify and differentiate statements of fact and statements of opinion?

5. Question: Can a statement contain both fact and opinion?

6. Question: Can some opinions be considered more reliable than others? Why? On what basis?

7. Question: Are there some "facts" that are beyond dispute versus other "facts" that are provisional?

### RECOGNIZING AND EVALUATING AUTHOR BIAS AND RHETORIC.

1. Question: What qualifications does the author have for writing on this subject? What are the qualifications of the sources quoted by the author?
2. Question: When and where was this article first published? Does this information affect the credibility of the article? Why?
3. Question: What overt and possibly covert organizational/ideological ties and material interests does the author have? Has the author in the past taken a position dictated by known "facts" that was in contradiction with his/her ideological biases and material interests?
4. Question: What do you think the author wants his/her readers to think or do? Does the author openly proclaim his/her biases at the onset? Does the author claim to be "unbiased" and therefore "objective"? Can any person be truly "unbiased"? Is objectivity versus subjectivity determined by degree of analytical rigor or does bias necessarily interfere with objectivity?
5. Question: Do the sources quoted by the author appear to be exclusively from a narrow segment of the broad spectrum of ideologies? Is there an apparent correspondence between the ideological perspective of the author and the ideological perspectives of the sources quoted?

### DIFFERENTIATING CORRELATION AND CAUSALITY:

1. Question: If two or more variables are shown to be highly correlated, on what basis other than the high degree

of correlation can causality be established?

2. Question: What is a statistical significant level of correlation? If one event or variable consistently follows another, why or why not can we automatically conclude that an event or variable was CAUSED by the event/variable that preceded it? When two variables are highly correlated over time, could it indicate that both variables were influenced by another variable/event that was not immediately apparent?

3. Question: How reliable are the data bases and statistical techniques employed to establish correlations? What are the real world time lags between movements of variables? Do reporting intervals for relevant data prohibit realistic time lagging of variables to establish correlations? On what basis have time lags between variables been assumed?

4. Question: Is there only one independent variable or are there multiple independent variables

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## CRITICAL THINKING (continued)

moving a given dependent variable? If there are multiple independent variables moving a dependent variable, on what basis can we establish ranking of independent variables in order of importance in causality?

5. Question: Does the author consider feedback effects, loops and factors outside of his/her academic discipline when viewing causality? What principles, theoretical work, time periods and analytical scopes were considered by the author in viewing causality? A variable thought to be an effect of something could also be considered a cause of something when longer time periods or wider analytical scopes are taken into account; example: high fertility rates are often seen as a fundamental cause of underdevelopment, and yet underdevelopment can be seen as a cause of high fertility rates when wider scopes of analysis are employed.

### DETERMINING ACCURACY / COMPLETENESS OF INFORMATION PRESENTED:

1. Question: Have any known facts, arguments, data and inductive procedures relevant to the argument been omitted? Why?

2. Question: What sources of information other than those cited could be used to check the information and data presented? Were multiple sources and citations given for each fact or piece of information presented and considered? Were conflicting data, arguments and statistical procedures presented and considered? Why were some data and arguments dismissed in favor of others?

3. Questions: Was information presented on the statistical, inductive and deductive processes employed to obtain or infer the information, facts and conclusions presented? What is the general reputation of the data / information sources and inductive / deductive processes employed?

### RECOGNIZING LOGICAL FALLACIES AND FAULTY REASONING:

Fallacy of "Post Hoc Ergo Propter Hoc" (Latin for "After this therefore

because of this"): Because an event follows a previous event, it is a fallacy that a given event must have been caused by the event that preceded it, e.g. "Every time I wash my car it rains, therefore if I wash my car it will rain."

2. Fallacy of "Proof" by Analogy: An analogy is not proof, only an invitation to thought. Comparisons can be carried too far or comparisons can be made between things that in reality have nothing in common.

3. Fallacy of Composition: It is a fallacy to argue that what is true in the particular must be true in general: e.g. if I cannot see at the football game, I should stand up; however, if everybody stands up, no one can see.

4. Fallacy of Division: It is a fallacy to argue that what is true in general, is necessarily true in the particular: e.g. federal budget deficits may be desirable in the short-run to stimulate an economy out of recession; for a particular person with marginal and transitory employment, deficit spending may bring disaster.

5. "Ad Hominem" Arguments: An "Ad Hominem" argument is one that

attempts to refute or present an argument by attacking the character, reputation or image of a person advancing the argument that is being attacked. A person held in general disrepute may be correct on a point, while a person held in high general repute may be simply wrong.

6. Appeal to Authority: One should never cite as "Evidence", the mere opinions of someone generally thought to be an expert or great authority. Quotations or opinions from great names and authorities may properly be used to provoke thought; they should never be used as "evidence."

7. Oversimplification: Potentially relevant information is ignored often to make a point: e.g. "the majority of voters in the U.S. are Democrats. Therefore Democrats will win every election."

8. Tautologies: A tautology is a circular argument that is inherently true and therefore meaningless in an argument. For example: "inflation has increased. This has been as a result of rising prices." Since the definition of inflation is rising prices, this becomes a tautology: prices are rising because prices are rising.

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**CRITICAL THINKING (continued)**

**Stereotyping:** People or objects that are only superficially similar are lumped together under simplistic labels, generalizations or categories e.g. Hispanic Americans "all" speak Spanish and "therefore" Spanish language advertising will appeal to "all" of them.

**10. Ignoring the Question: Digression, obfuscation or similar techniques** are used to avoid answering a question or dealing with an argument e.g. when asked about the possibility of a tax increase, Senator Porkbarrel replies, "I have always met the obligations I have to those I represent."

**11. Faulty or Unwarranted Generalization:** A generalization unwarranted by the limited data or evidence given e.g. Ducks and Geese go south for the winter and "therefore" all waterfowl migrate south for the winter.

**12. Observationally Equivalent Hypotheses:** Many arguments appear to be logical and based upon sound evidence. There may be, however, other competing and equivalent-in-standing hypotheses that appear to be equally logical and based upon sound evidence. Why did the Stock Market Crash? Why did the election results come out as they did?

**CONTRASTING AND COMPARING INFORMATION AND PERSPECTIVES:**

**1. Question:** What experience and qualifications does the author have on the subject relative to the author writing from an opposing perspective? Does the author explicitly state his/her biases or attempt to hide them?

**2. Question:** To what extent does the author make the reader aware of opposing arguments?

**3. Question:** Does the author refer to and deal with, data sources employed by those with opposing perspectives? Does the author employ new data and data sources to deal with opposing perspectives? What is the general reputation and credibility of those sources and the data sources employed by the opposition?

**4. Question:** Do you have the feeling that the author is constructing assumptions and structuring "supporting data" so as to "logically" arrive at predetermined and ideologically-convenient conclusions? How do the opposing authors stand on this question? Are there other possible conclusions consistent with the data presented that have not been addressed by the authors? Which of the contending authors is strongest in presenting and dealing with, opposing points of view?

**CONTEXTUAL CHALLENGES:**

Some contextual challenges are forces, interests, institutions, modes of human behavior and institutions that challenge, limit and inhibit the full receiving, processing and utilization of information and data.

1. Pseudo-objectivity of Analyses of Problems
2. Withholding of Relevant Information (deliberate Cover-ups)
3. Avoidance of Issues (Calculated Reporting to Enhance Careers and Images of Institutions)
4. Disinformation and Calculated Misrepresentation of Information
5. Biased Expertise ("Experts" for Hire pandering for personal gain)
6. Corruption
7. Harassment (Of Whistle Blowers etc.)
8. Short-termism (By focusing on short-term issues, gives appearance of effective action)
9. Ambiguity (Ambiguous terms or meaning changed to suit the argument)
10. Unaccountability (Organizations and Institutions lack accountability and therefore incentives to properly research and report).
11. Lack of Personal and Institutional Integrity and Credibility
12. Inter and Intra Organizational Competition (e.g. Media competing to get the "scoop", "Empire Builders", "Turf Protectors", "N.I.H." (Not Invented Here) Syndrome
13. Situational and Dubious Standards of Proof

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**EMPLOYEES' RIGHT TO PRIVACY: HEALTH ISSUES IN THE WORKPLACE**

*by Karen Slayer & Dawna Masner*

**E**mployees' rights are a major topic of concern in today's workplace. Wrongful discharge claims, sexual harassment cases, and discrimination charges are rapidly proliferating. Law firms have an equal opportunity to join the ranks of employers who are defending claims arising under federal, state and local employment laws. In fact, many of our clients may be well advised to "do as we say, not as we do" in the area of employer/employee relations.

Privacy rights in the workplace are the focus of this article. The question and answer format is intended to encourage greater dialogue between law office administrators and the lawyers with whom they work. A team approach to the development and application of employment policies will best serve the interests of the law firm. Sound policy decisions increase employee morale and productivity, and minimize the risk of costly litigation.

**Question:** Where should an administrator file an employee's medical records or on-the-job injury claim information?

**Answer:** All records which relate to an employee's medical condition should be maintained in a file which is separate from other personnel information. Under the Americans with Disabilities Act ("ADA"), information which is obtained in medical examinations for applicants and employees must be collected and maintained in separate files and treated as confidential. Access to the medical file should be made strictly on a "need to know" basis. For example, medical information may be disclosed for the purpose of identifying necessary restrictions on the employee's work, or for

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