

# Indiana Law Review



Volume 21 No. 2 1988

## Article

**Toward True and Plain Dealing: A Theory of Fraudulent Transfers Involving Unreasonably Small Capital**

*Bruce A. Markell*

**The Rationale of Personal Admissions**

*Roger Park*

## Notes

**Apportionment of Harm to Causes: Asbestosis and the Smoking Plaintiff**

**Remedies for Employer's Wrongful Discharge of an Employee Subject to Employment of Indefinite Duration**

**The Limitations Period for Title I of the LMRDA: Protection of the Union Member's Civil Rights**

## Book Review

**Applications of Political Science to the Analysis and Practice of Law**

*David A. Funk*





## Why more lawyers choose USCA®

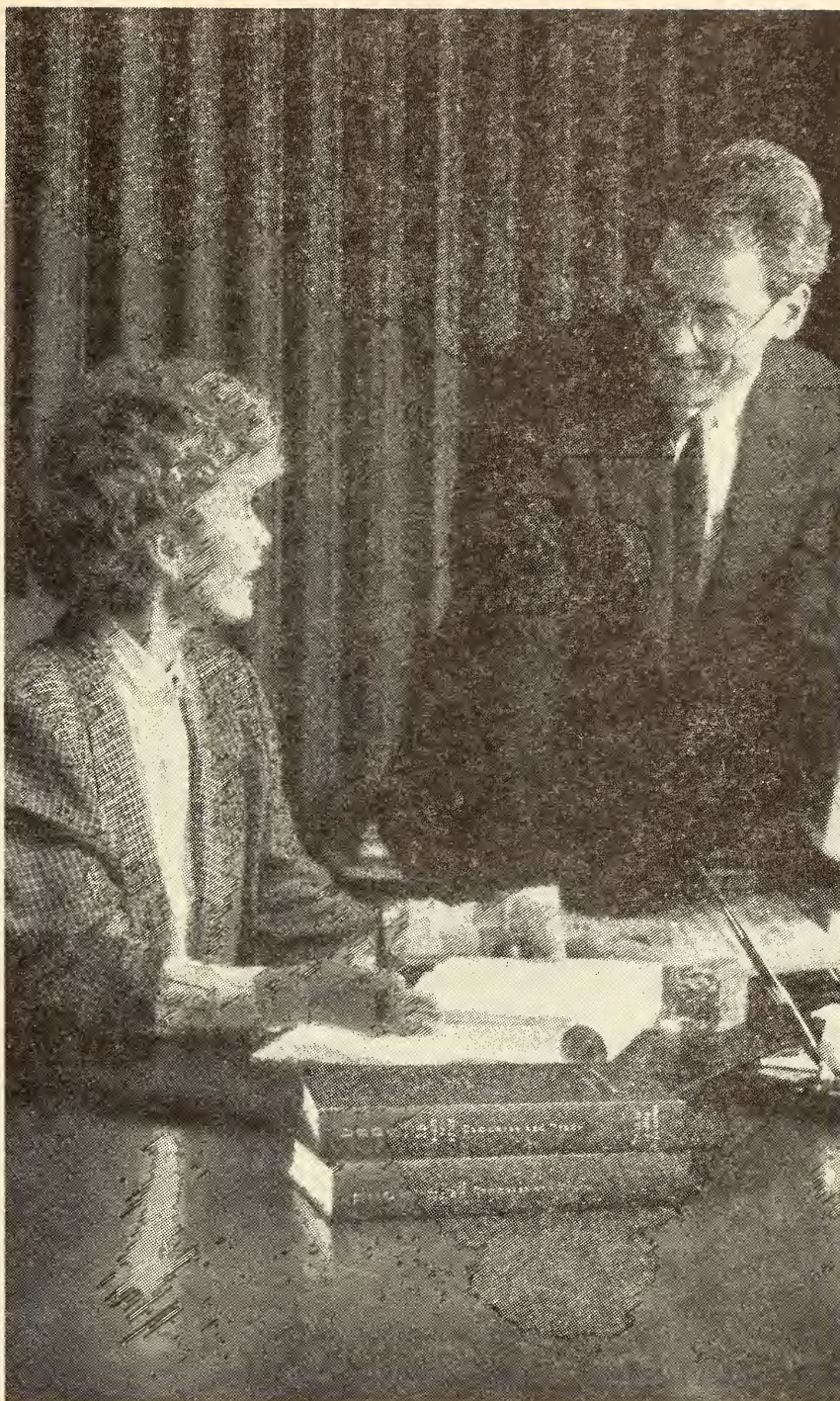
More lawyers choose USCA than any other annotated federal law source. Here are just some of the reasons why:

- USCA is complete. It offers more comprehensive coverage of federal cases than any other federal statute source.
- It's official. USCA is the only annotated federal statute set which follows the official text of the U.S. Code, which is prepared by the Office of the Law Revision Counsel of the House of Representatives.
- USCA works with your library through West's® Key Number System, WESTLAW® and other library references.
- Only USCA has convenient alphabetical indexes to annotations.
- USCA has superbly detailed master and individual title indexes.
- USCA contains the full text of certain CFR regulations.
- Only USCA provides valuable Legislative History Notes directing you to specific pages of the U.S. Code Congressional and Administrative News.
- USCA is renowned for its editorial integrity.

Isn't it time you owned United States Code Annotated®? Contact your West Sales Representative today . . . or write to West Publishing Company, 50 W. Kellogg Blvd., P.O. Box 64526, St. Paul, MN 55164-0526.

**USCA®**  
*The  
Choice for success*

Call 1-800-328-9352  
(MN 1-612-688-3600)

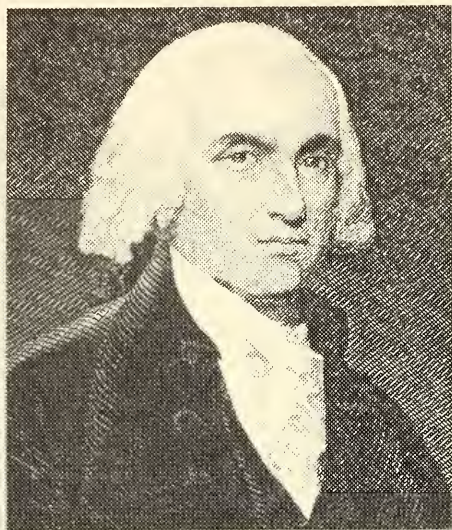


**TODD M. DAVIS, J.D.**  
793 Bennett Road  
Carmel, IN 46032  
Phone: 317/846-9615

**JOHN M. WALSH**  
P.O. Box 6278  
South Bend, IN 46660  
Phone: 219/272-5307

**DALE A. CHRIST, ESQ.**  
7440 North Shadeland Avenue  
Suite 150  
Indianapolis, IN 46250-2027  
Phones: 317/577-9378  
Evansville: 812/423-8818





**T**wo hundred years ago, this man reported a story so controversial, we're still publishing weekly updates.

James Madison did more than play a leading role in the Constitutional Convention of 1787. He also *reported* on it.

It was a monumental achievement. During four long months of impassioned debate, Madison spoke more frequently than almost any other delegate. Yet he also kept a detailed written report of every speech and every hard-fought compromise. Jefferson later called Madison's report "*the ablest work of this kind ever yet executed . . . a labor and exactness beyond comprehension.*"

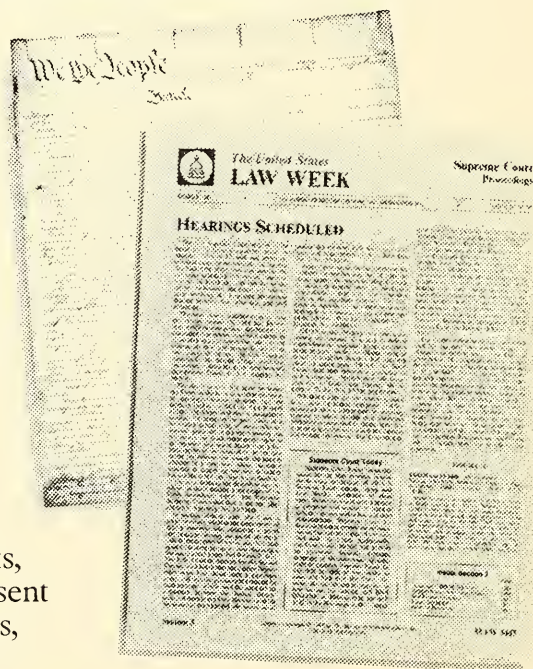
Of course the story of the Constitution didn't end with the adjournment of the Convention. Our legal system is still changing, still evolving. The story that Madison first reported 200 years ago is now updated for you every week, in the pages of BNA's *U.S. Law Week*.

*Law Week* gives you an indispensable overview of the whole evolving body of U.S. law. In addition to complete coverage of Supreme Court proceedings, *Law Week* gives you a concise *Summary and Analysis* of each week's most important developments . . . digests of precedent-setting federal and state decisions . . . agency rulings . . . important new federal statutes . . . and more.

Each year *Law Week's* editors screen 25,000 decisions from federal and state courts, reporting those that set new precedents, present new perspectives on existing legal principles, or involve controversial issues.

In only a few minutes each week, *Law Week* keeps you abreast of current trends and lets you find new precedents and conflicting decisions—before these cases are reported in official case reporters.

Today *Law Week* builds your awareness of the broad legal context within which you will practice. You will soon find it even more indispensable, as you play your own role in the 200-year-old story that Madison first reported in 1787.



***People who know law, know BNA.***



THE BUREAU OF NATIONAL AFFAIRS, INC.  
1231 25th Street, N.W., Washington, DC 20037



Indiana National

on the subject of options

Investment Option	Minimum Investment	Maturities	Credit	Income	Benefits
Tax-Exempt Municipal Bonds/ Unit Investment Trusts	\$ 5,000 1,000	To 30 Years	Backed by Issuer	Semi-Annual Coupon/ Monthly, Quarterly, Semi-Annual	Exempt from Federal Income Tax for Corporations, and from State and Federal Tax for Individuals.*
Money Market Funds	1,000	Day to Day	Issuing Fund	Monthly	High current income, preservation of capital, easy withdrawal procedures. Share value stability & check writing redemption.
Mutual Funds	250	Open End Funds	Issuing Fund	Monthly	High current return, monthly income, liquidity, high quality portfolios.
U.S. Treasury Bills	10,000	One Year or less	Direct Obligations of U.S. Treasury	Discount to Maturity	High quality, extremely liquid, state tax exempt.*
U.S. Treasury Notes	5,000 1,000	1 - 3 Years 3 - 10 Years	Direct Obligations of U.S. Treasury	Semi-Annual Coupon	High quality, extremely marketable, state tax exempt.*
U.S. Treasury Bonds	1,000	Over 10 Years	Direct Obligations of U.S. Treasury	Semi-Annual Coupon	High quality, extremely marketable, state tax exempt.*
Discount Notes: Primarily Federal Home Loan Banks, FNMA, Federal Farm Credit Banks	10,000	30 to 360 Days	Issuing Agency	At Maturity	May offer higher yields and smaller minimums than Treasury issues. High quality and extremely liquid.*
Federal Farm Credit, FNMA, Federal Home Loan Banks	1,000 5,000 10,000	6 Months to 30 Years	Issuing Agency	At Maturity or Semi-Annual Coupon	May offer higher yields and smaller minimums than Treasury issues. High quality and good marketability.*
Bankers Acceptances	100,000	10 Days to 270 Days	Guaranteed by Issuing Bank	Discount to Maturity	High quality and extremely liquid.*
Commercial Paper	100,000	To 270 Days	Backed by Issuer	At Maturity or Discount to Maturity	High yields, good marketability, highly liquid.*

\* Possible market risk if sold before maturity date.

# Have you considered all your options?

## Investment banking from Indiana National

You may not have thought of Indiana National as a source of investment banking. But we're one of Indiana's major marketers of tax-exempt municipal bonds and notes, government and agency securities.

## Reaching your investment goals

Our account executives have proven their capabilities and market insights by assisting clients in the acquisition of over \$32 billion in fixed income securities during the last five years.

And because they focus on safety, liquidity and rate of return, they provide the kind of securities that meet clients' investment objectives.

## Managing your investment plan

At Indiana National you receive individualized attention to your investment goals. And you benefit from our decades of experience in personal service and prompt execution of trades.

The next time you're ready to make an investment, think of Indiana National. Because, when it comes to meeting your investment objectives, we've got all the options.

Call 1-800-382-1102 or (317) 266-6829 for more information.



**Indiana National**  
Investment Banking Division

Member FDIC

# **Indiana Law Review**

We are pleased to announce that Volume 21, Number 3,  
containing the following article

**An Essay: The Competing Currents of  
Rule 10b-5 Jurisprudence**

David M. Phillips

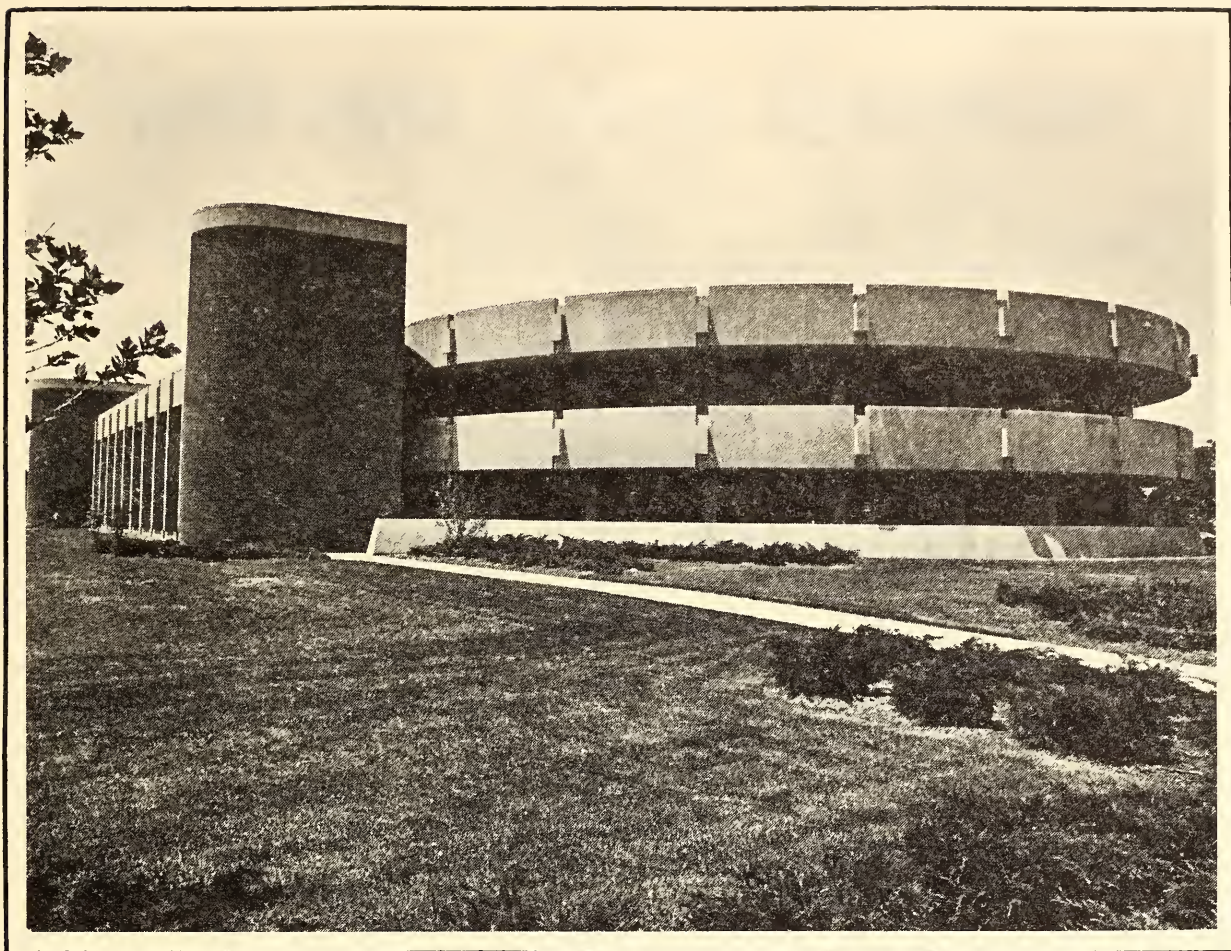
**will be available Summer 1988**

**Price: \$7.00**

Send orders to: Business Editor  
Indiana Law Review

Indiana University School of Law—Indianapolis  
735 W. New York Street, Indianapolis, Indiana 46202





---

**Please enter my subscription to the  
INDIANA LAW REVIEW**

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

Enclosed is \$\_\_\_\_\_ for \_\_\_\_ subscriptions.

Bill me for \_\_\_\_\_ subscriptions.

Mail to:

INDIANA LAW REVIEW  
INDIANA UNIVERSITY  
SCHOOL OF LAW—INDIANAPOLIS  
735 West New York Street  
Indianapolis, Indiana 46202

Subscription Rates (one year):

Regular, \$22; Foreign, \$25; Survey, \$12;  
Single Issue, \$7

# Indiana Law Review

Volume 21

1988

Number 2

Copyright © 1988 by the Trustees of Indiana University

## TABLE OF CONTENTS

### ARTICLE

- Toward True and Plain Dealing: A Theory of  
Fraudulent Transfers Involving Unreasonably  
Small Capital .....*Bruce A. Markell* 469
- The Rationale of Personal Admissions .....*Roger Park* 509

### NOTES

- Apportionment of Harm to Causes: Asbestosis  
and the Smoking Plaintiff ..... 523
- Remedies for Employer's Wrongful Discharge  
of an Employee Subject to Employment of  
Indefinite Duration ..... 547
- The Limitations Period for Title I of the LMRDA:  
Protection of the Union Member's Civil Rights ..... 587

### BOOK REVIEW

- Applications of Political Science to the Analysis  
and Practice of Law .....*David A. Funk* 617

Volume 21

Spring 1988

Number 2

The INDIANA LAW REVIEW (ISSN 0090-4198) is the property of Indiana University and is published quarterly by the Indiana University School of Law—Indianapolis, which assumes complete editorial responsibility thereof. Subscription rates: one year \$22; foreign \$25. Please notify us one month in advance of any change in address and include both old and new addresses with zip codes to ensure delivery of all issues. Send all correspondence to Editorial Assistant, Indiana Law Review, Indiana University School of Law—Indianapolis, 735 West New York Street, Indianapolis, Indiana 46202. Publication office: 735 West New York Street, Indianapolis, Indiana 46202. Second class postage paid at Indianapolis, Indiana 46201.

POSTMASTER: Send address changes to INDIANA LAW REVIEW, 735 West New York Street, Indianapolis, Indiana 46202.



# Indiana Law Review

---

Volume 21

1988

---

*Editor-in-Chief*

Ellen M. White

*Executive Editors*

*Articles and Production*

Kristin A. Mulholland

*Notes and Topics*

John R. Maley

*Articles Editors*

Margo Eckard

Scott Bruning Stahl

Marcia K. Icenogle

Ron Weisenberger

Michael D. Wright

*Business Editor*

D. Michael Young

*Note and Development Editors*

Leslie Cracraft

Stephen C. Hombach

Michael P. Dugan

Kevin R. Kaster

David H. Eyke

John G. Shubat

---

*Associate Editors*

Jay D. Benjamin

Mary Jane Harmon

Lyn K. Berkebile

Amy Link Karozos

David Berry

Michael McNelis

Duane R. Denton

Patrick D. Murphy

Richard R. Dykhouse

Fran Quigley

Teresa Eppley

Clifford T. Rubenstein

Robert C. Feightner

James Schrier

Edwin W. Free III

Douglas Taylor

Ronald Gorsline

Jeffrey Townsend

Kathryn S. Hall

James Waanders

Rebecca Wehling

---

*Editorial Assistant*

Amy Morrison Grubbs

*Faculty Advisor*

Paul J. Galanti

# Indiana University School of Law—Indianapolis

## 1987-88 ADMINISTRATIVE OFFICERS AND FACULTY

### Administrative Officers

- THOMAS M. EHRLICH, LL.B., *President of the University*  
GERALD L. BEPKO, LL.M., *Vice-President*  
NORMAN LEFSTEIN, LL.M., *Dean*  
JAMES F. BINDLEY, J.D., *Assistant Dean for Administration*  
G. KENT FRANSDEN, J.D., *Associate Dean for Student Affairs*  
JAMES W. TORKE, J.D., *Acting Associate Dean for Student Academic Affairs*

### Faculty

- THOMAS B. ALLINGTON, *Professor. B.S., University of Nebraska, 1964; J.D., 1966; LL.M., New York University, 1971.*  
EDWARD P. ARCHER, *Professor. B.M.E., Rensselaer Polytechnic Institute, 1958; J.D., Georgetown University, 1962; LL.M., 1964.*  
JAMES F. BAILEY, III., *Professor and Director of Law Library. A.B., University of Michigan, 1961; J.D., 1964; M.A.L.S., 1970.*  
JAMES F. BINDLEY, *Assistant Dean for Administration and Director of Placement & Development, B.A., Loyola University, 1969; J.D., University of Kentucky, 1972.*  
PAUL N. COX, *Professor. B.S., Utah State University, 1971; J.D., University of Utah, 1974; LL.M., University of Virginia, 1980.*  
CLYDE HARRISON CROCKETT, *Professor. A.B., University of Texas, 1962; J.D., 1965; LL.M., University of London (The London School of Economics and Political Science), 1972.*  
DEBRA A. FALENDER, *Professor. A.B., Mount Holyoke College, 1970; J.D., Indiana University, 1975.*  
G. KENT FRANSDEN, *Associate Dean for Student Affairs and Associate Professor. B.S., Bradley University, 1950; J.D., Indiana University, 1965.*  
DAVID A. FUNK, *Professor. A.B., College of Wooster, 1949; J.D., Case Western Reserve University, 1951; M.A., The Ohio State University 1968; LL.M., Case Western Reserve University, 1972; LL.M., Columbia University, 1973.*  
PAUL J. GALANTI, *Professor. A.B., Bowdoin College, 1960; J.D., University of Chicago, 1963.*  
HELEN P. GARFIELD, *Professor. B.S.J., Northwestern University, 1945; J.D., University of Colorado, 1967.*  
HAROLD GREENBERG, *Associate Professor. A.B., Temple University, 1959; J.D., University of Pennsylvania, 1962.*  
JEFFREY W. GROVE, *Professor. A.B., Juniata College, 1965; J.D., George Washington University, 1969.*  
WILLIAM F. HARVEY, *Carl M. Gray Professor of Law. A.B., University of Missouri, 1954; J.D., Georgetown University, 1959; LL.M., 1961.*  
W. WILLIAM HODES, *Professor. A.B., Harvard College, 1966; J.D. Rutgers Newark, 1969.*  
LAWRENCE A. JEGEN, III., *Thomas F. Sheehan Professor of Tax Law and Policy, 1982. A.B., Beloit College, 1956; J.D., The University of Michigan 1959; M.B.A., 1960, LL.M., Harvard University, 1963.*  
HENRY C. KARLSON, *Professor. A.B., University of Illinois, 1965; J.D., 1968; LL.M., 1977.*  
WILLIAM ANDREW KERR, *Professor. A.B., West Virginia University, 1955. J.D., 1957, LL.M., Harvard University, 1958; B.D., Duke University, 1968.*  
ELEANOR D. KINNEY, *Assistant Professor. A.B., Duke University, 1969; M.A., University of Chicago, 1970; J.D., Duke University, 1973.*  
WALTER W. KRIEGER, *Associate Professor. A.B., Bellarmine College, 1959; J.D., University of Louisville, 1962; LL.M., George Washington University, 1969.*  
DAVID P. LEONARD, *Professor. B.A., University of California at San Diego, 1974; J.D., UCLA School of Law, 1977.*  
ROBIN PAUL MALLOY, *Associate Professor. B.S., Purdue University, 1971; J.D., University of Florida, 1980; LL.M., University of Illinois, 1983.*  
WILLIAM E. MARSH, *Professor. B.S., University of Nebraska, 1965; J.D., 1958.*



SUSANAH M. MEAD, *Associate Professor. B.A., Smith College, 1969; J.D., Indiana University, 1976.*

MARY H. MITCHELL, *Associate Professor. A.B., Butler University, 1975; J.D., Cornell Law School, 1978.*

DAVID R. PAPKE, *Associate Professor. A.B., Harvard College, 1969; J.D., Yale Law School, 1973; M.A., in American Studies, Yale University, 1973; Ph.D., in American Studies, The University of Michigan, 1984.*

RONALD W. POLSTON, *Professor. B.S., Eastern Illinois University, 1953; LL.B., University of Illinois, 1958.*

KENNETH M. STROUD, *Professor. A.B., Indiana University, 1958; J.D., 1961.*

JAMES W. TORKE, *Acting Associate Dean. B.S., University of Wisconsin, 1963; J.D., 1968.*

JOE A. TUCKER, *Assistant Professor. B.A., Houston, 1977; J.D., University of Texas, 1981.*

JAMES PATRICK WHITE, *Professor of Law. A.B., University of Iowa, 1953; J.D., 1956; LL.M., George Washington University, 1959.*

LAWRENCE P. WILKINS, *Professor. B.A., The Ohio State University, 1968; J.D., Capital University Law School, 1973; LL.M., University of Texas School of Law, 1974.*

MARY WOLF, *Visiting Assistant Professor of Law, B.A., Saint Xavier College, 1969; J.D., University of Iowa College of Law, 1974.*

HAROLD R. WOODARD, *Professorial Lecturer. B.S., Harvard University, 1933; J.D., 1936.*

### **Emeriti**

AGNES P. BARRETT, *Associate Professor Emeritus. B.S., Indiana University, 1942; J.D., 1964.*

CLEON H. FOUST, *Professor Emeritus. A.B., Wabash College, 1928; J.D., University of Arizona, 1933.*

JOHN S. GRIMES, *Professor of Jurisprudence Emeritus. A.B., Indiana University. 1929; J.D., 1931.*

MELVIN C. POLAND, *Cleon H. Foust Professor of Law Emeritus. B.S., Kansas State University, 1940; LL.B., Washburn University, 1949; LL.M., The University of Michigan, 1950.*

R. BRUCE TOWNSEND, *Cleon H. Foust Professor of Law Emeritus, A.B., Coe College, 1938; J.D., University of Iowa, 1940.*

### **Legal Writing Instructors**

CYNTHIA ADAMS, *B.A., Indiana State University, 1976; B.A., Kentucky Wesleyan College, 1977; J.D., Indiana University, 1983.*

ROBERT L. ELLIS, *B.A., Ohio State University, 1971; J.D., Antioch School of Law, 1981.*

VICKIE RENFROW, *Lecturer, B.A., University of Northern Iowa, 1970; M.A., 1971; Ph.D., Indiana University, Bloomington, 1976; J.D., Indiana University, Bloomington, 1981.*

JOAN RUHTENBERG, *Lecturer. B.A., Mississippi University Women, 1959; J.D., Indiana University, 1980.*

### **Law Library Staff**

TERRI LEA HARDIN, *Affiliate Librarian, B.A., Indiana University, 1982; M.L.S., 1983.*

MARY P. HUDSON, *Assistant Librarian, B.A., Ball State, 1969; M.L.S., Indiana University, 1973.*

WENDELL F. JOHNTING, *Technical Services Librarian. A.B., Taylor University, 1974; M.L.S., Indiana University. 1975.*

KIYOSKI OTSU, *Assistant Librarian, Parkland College, A.A., 1976; A.B., University of Illinois, 1980; M.S., 1982; C.A.S., 1983.*

