CONTENTS

Preface, xi Acknowledgments, xvii Introduction to the Student, xxi

CHAPTER 1. THE LAWYER AS WRITER

A. Learning the Language of the Law, 1

Twain, Life on the Mississippi, 8; Dickens, American Notes, 11; Parkman, La Salle and the Discovery of the Great West, 13; Lévi-Strauss, Tristes Tropiques, 15; Mailer, Of a Fire on the Moon, 17; Twain, Huckleberry Finn, 19; Labov, The Logic of Nonstandard English, 25

Writing Assignment 1: A Variety of Languages, 32

Writing Assignment 1 (Alternative): What Do Different Speakers Want to Know? 34

- B. Success for the Lawyer and Writer: Establishing the Right Relationship with His Language, 39
 - 1. Defining the Relationship Between Self and Language: Troilus and Cressida, 41
 - 2. Traditional Ways of Controlling a Language, 46
 - a. Metaphor, 47
 Blake, The Sick Rose, 48; Conrad, The Mirror of the Sea, 50
 - b. Irony, 54 Thoreau, Walden, 55
 - c. Ambiguity, 57 Frost, The Road Not Taken, 59; Melville, Billy Budd, 60
 - d. The Power of the Language Maker, 66
 Writing Assignment 2: Controlling a Language System, 67
 Writing Assignment 2 (Alternative): Good Writing, 68

CHAPTER 2. THE LIMITS AND RESOURCES OF LEGAL LANGUAGE: AN INTRODUCTION TO YOUR LITERARY CIRCUMSTANCES

Introduction, 71

A. Your Language in a Universe of Languages – A Comparative Anthology on Death, 73

viii CONTENTS

- 1. What the Law Leaves Out: The Law Among Other Possibilities for Expression, 74
 - a. The Georgetown Hospital Case: A Paradigm of Legal Speech? 74

Application of the President and Directors of Georgetown College, Inc., 74

b. A Primary Distinction in Talk About Death: Humanity and Inhumanity in Speech, 80
Cromwell, Letter to Colonel Walton, 80; Boyertown Burial Casket

Cromwell, Letter to Colonel Walton, 80; Boyertown Burial Casket Company, Shareholders Report, 83; Manual Outlines "Perfect Sniper," 84; Hoess, Commandant of Auschwitz, 85; People v. Sherwood, 88

- c. Justifying a Language by Its Special Purposes, 92
- 2. Professional Attitudes: Uses and Effects of Professional Rhetoric, 93

Joyce, A Portrait of the Artist as a Young Man, 94; Proust, Remembrance of Things Past, 96; Norton, The Treatment of a Dying Patient, 100

Writing Assignment 3: Defining by Comparison the Literature of the Law, 107

Writing Assignment 3, Alternative A: The Law Controls the Speaker, 108

Writing Assignment 3, Alternative B: Drafting a Complaint, 108

CHAPTER 3. HOW THE LAW TALKS ABOUT PEOPLE—"WHO IS THIS MAN?"

Introduction, 109

- A. Possibilities for the Definition and Expression of Character: The Law Among Others, 112
 - 1. Character and Caricature, 113
 - a. Being True and False to Life, 113
 Douglas, A Plea for Better Manners, 114; Forster, Aspects of the Novel, 115; Macaulay, The History of England from the Accession of James II, 117; Macaulay, Notes on the Indian Penal Code, 119; Saki, The Talking-Out of Tarrington, 120; Saki, The Open Window, 122; Hilton, Lawyers at Play, 125; Miranda v. Arizona, 127; Dickens, Little Dorrit, 131; Dempsey, The Apple Falls Close to the Tree, 133; People v. Haney, 134; Hoffa v. United States, 138; Lamb, The Praise of Chimney-Sweepers, 140
 - b. The Alcestis of Euripides A Play About Character and Caricature, 140
 - c. The Uses of Caricature, 144
 Forster, Aspects of the Novel, 145; Chaucer, The Pardoner's Tale, 147; Theophrastus, The Characters, 150; Fiction and Reality in

Talk About People: The Truth of Generalization, 152; Pope, Preface to The Iliad, 153; The Form of Solemnization of Matrimony, 154; I. and P. Opie, Children's Games in Streets and Playground, 154

2. Other Possibilities for the Rendition of Character: Complications, Inconsistency, and Detail, 155

Troyat, Tolstoy, 157; Lawrence, Women in Love, 160; Shakespeare, Antony and Cleopatra, 164

3. The Way Institutions Talk About People—A Fundamental Paradox for the Law, 163

Writing Assignment 4: Talking About Others, 170

- B. Talking About People in a Language of Labels: The Insanity Defense, 170
 - 1. Proposals and Practices, 172

American Law Institute, Model Penal Code, 172; The Problem of Defining the Criteria of Irresponsibility, 173; Glueck, Law and Psychiatry, 177

2. Talk About the Mind: The Fact of Difference, 181
Marais, The Soul of the White Ant, 182, 184; Marais, The Soul of the Ape, 185; Tinbergen, The Study of Instinct, 186; Ferrin v. People, 188; Dickinson, A Bird Came Down the Walk, 189

3. Mental Illness: A Medical Problem for Medical Experts? 189 Washington v. United States, 190

Writing Assignment 5: The Insanity Defense, 204

CHAPTER 4. THE IMAGINATION OF THE LAWYER

Introduction, 207

A. Is the Judge Really a Poet? 211

1. The Message and the Rule: What More Do We Find in the Poem and Opinion? 212

Boulton, The Language of Politics in the Age of Wilkes and Burke, 213

2. Reading the Poem: The Education of the Imagination? 216
Frost, The Constant Symbol, 216; Frost, The Figure a Poem
Makes, 220; Frost, Design, 230; Frost, Directive, 230; Donne, The
Sun Rising, 233; Marvell, To His Coy Mistress, 235

3. More on the Judicial Opinion and the Poem, 236

Writing Assignment 6: The Judicial Opinion as a Constant Symbol, 240

Writing Assignment 6 (Alternative): What Beyond Paraphrase? 241

- B. The Narrative Imagination and the Claim of Meaning, 242
 - 1. Telling a Story and Saying What It Means: Addressing an Incompatibility of Discourse, 245

X CONTENTS

- a. Narrative and Analysis: The Differences Elaborated, 246
- b. The Force of Narrative: A Pressure Towards the Inexpressible, 247
- c. How the Story Begins: The Complicating Choices of Shape and Direction, 250
 Dickens, Little Dorrit, 254
- d. The Ending as Cliché: Controlling Narrative Conclusion, 256
- e. The Force of Narrative: A Pressure Towards Falsehood? 259 Tolstoy, War and Peace, 259
- 2. Reconciling the Demands of Imagination and Reality: The Historian as Model for the Lawyer? 262

Macaulay, The History of England from the Accession of James II, 263; Hume, History of England, 265; Macaulay, The History of England from the Accession of James II, 266; The Nature of Historical Narrative, 267

- 3. Placing the Private Self in a Narrative of the Public World: Clarendon's History of the Rebellion, 273
 - a. The Narrative, 275
 - b. Putting the Question: How to Live in Such a World? 289
 - Writing Assignment 7: Reconciling the Demands of Reality and Imagination, 295
 - Writing Assignment 7, Alternative A: Telling a Story and Saying What It Means, 295
 - Writing Assignment 7, Alternative B: Placing the Private Self in the Public World, 296
 - Writing Assignment 7, Alternative C: Rewriting an Old Assignment, 296
 - Writing Assignment 7, Alternative D: The Historian and the Lawyer, 296

Index, 297