Contents

Acknowledgments xi
Foreword xiii

ONE - LEGAL KNOWLEDGE AS AN ART:
READING (AND WRITING) A STATUTE 3

What Lawyers Know 4
The Lawyer as Writer 7
The Model Penal Code 10
   Codifying the Criminal Law 11
   Interpretation 12
   Putting the Code to Work 14
   Conflicts of Discourse and of Purpose 15
   Facing Tensions and Contradictions 18

TWO - LEGAL KNOWLEDGE AS AN ART:
READING (AND WRITING) A JUDICIAL OPINION 23

Schenck v. United States 25
Abrams v. United States 28
Holmes’s Opinion in Dissent 31
   The Beginnings of First Amendment Law 34
   Difficulty and Paradox 37
   An Act of Imagination 39
Legal Knowledge as a Writer’s Knowledge 41
THREE - WHAT'S WRONG WITH OUR TALK ABOUT RACE?  45

Huckleberry Finn  46
The Problem of Race-Talk  48
  The National Narrative  50
  What Is Race?  52
  The Unique Experience of African Americans  54
  Stereotype vs. Malevolence  58
  Abstract Judicial Language  61
  The “Cost” to the White Student  62
How Should We Think about Race?  63
  Civil War Amendments  64
  “State Action”  66
  Justice Douglas  69
  Which Race?  71
  The “Fact” of “Race”  74
The Language of War  75

FOUR - TENSIONS DEFINING THE ART OF LAW  81

Law as Language  82
Tensions in Legal Thought and Expression  85
  Between Legal Language and Ordinary Language  85
  Between Law and Other Specialized Languages  88
  Between Opposing Lawyers  89
  Between Competing but Plausible Readings of the Law  91
  Between Substance and Procedure  93
  Between the Particular and the General  94
  Between Law and Justice  95
  Between the Past and Present—and the Future Too  97
Addressing These Tensions in Writing  97
Consequences  98
  The Law Is Not the Rules  98
  The Law Is Not Policy  99
  The Law Establishes a Set of Possibilities for Original
    Thought and Expression  100
  The Law Is an Art of Mind and Language  102
What Does This Mean about Justice?  103
CONTENTS – ix

FIVE – LAW, ECONOMICS, AND TORTURE 107

Making the Rich Richer 109

  The Consumer Dream and the Ideology of the Market 110
  Advertising and Propaganda 112
  The Fact of Empire 113
  Democracy at Work 115

The Disappearance of Law 115

  The Courts and the Law Schools 116
  Cost-Benefit Analysis 119
  What Law Can Be 120

Dehumanization 122

  The Propaganda of Torture 123
  “The Need for Information” 124
  Irrationality 125
  Human Slavery 128

Democracy and Empire 130

SIX – DIFFICULTY AND RESPONSIBILITY IN
THE FACE OF EVIL 135

Reading Augustine’s Confessions 138

  Translations 138
  The Narrative 139
  Transformations 140
  Failure and Conversion 141

After the Narrative 142

  Memory 143
  Time 143
  Genesis 144

The Modern Lawyer 145
Antigone Voilée 147

  Afterword 155
  Works Cited 161
  Cases Cited 165