

## A Conversation: James R. Elkins & Ruthann Robson

[This conversation is an edited version that appeared in the *Legal Studies Forum*, vol.29, 2005)]

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the sun shifts in a direction you did not predict.  
smoke drifts, but you cannot measure the distance,  
every point looks half-way from the fuzzy horizon.

if you wait here long enough, the mountains  
will set themselves on fire, sparked  
by the fear of winter. you start to grow cold.

....

it occurs to you vaguely, you could throw  
yourself overboard, to drown in the ocean of sky,  
to become a mask on the face of the cliffs.

but you want to remain unpredictable. such  
clichés belong in films about outlaws and women,  
in nineteenth century novels, in nightmares.

....

it seems you have spent most of your life waiting  
for some purpose or some freedom to overtake you.

—Ruthann Robson, excerpt from “The Ledge” in *Masks*<sup>1</sup>

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I am not interested in fooling anyone except myself. I call it survival

—Ruthann Robson, *Notes on My Dying*<sup>2</sup>

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<sup>1</sup> Ruthann Robson, *MASKS* 89-91, at 89-90 (Wellfleet, Massachusetts: Leapfrog Press, 1999).

<sup>2</sup> Ruthann Robson, *Notes on My Dying*, 18 *Creative Nonfiction* 8, 9 (2001)

Ruthann Robson is one of the most talented, creative, engaged, and informative writers of “creative nonfiction” in the United States. In her bold and innovative writings, theoretical and poetical, she has produced a body of work of artistry, as a scholar, novelist, and poet, that makes her most deserving of the ultimate accolade: *she is a real writer*.<sup>3</sup>

Of all Robson’s work, I have been particularly drawn to her essays in which we find prose of stark beauty and surgical precision. What we find in Robson’s essays is a prose poetics, prose that works on us (with all its white space and special configuration of lines) as poetry, a luminous prose (of the kind we find illuminated in poetry) that stuns us to silence, to tears, and finally to wonderment.

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**Elkins:** Ruthann, you are engaged in so many different kinds of writing, as well as teaching, that I imagine you must lead a richly complex life. Given the range of your writing—essays, novels, short stories, poetry, academic legal books and articles—would it be fair to say that your life, for better and for worse, has been richly complex?

**Robson:** A life that is complex? Yes. Although I don’t believe it’s “rich” or that my writing has made me wise. And I’m not sure it is anymore “complex” than anyone else’s life. I’m sure your life is complex, no?

But that’s always a mystery to me—the complexity and actual experience of other people’s lives. I think both law and literature give one an entree into other people’s lives. Law because as lawyers—and even professors and legal scholars—we try to help people solve particular problems, and then realize that the problem we are working on is not so “particular” and is only partially legal. And literature because we move outside our own selves, transmuting our experiences through lyricism and narration.

**Elkins:** I’d say, with regard to my own life, that it would be greatly simplified if I did not serve as editor of the *Legal Studies Forum*, if I attempted to write less, if I attempted to limit my teaching to

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<sup>3</sup> For a wide-ranging symposium that celebrates the many nooks and crannies of Ruthann Robson’s scholarly, pedagogical, and writing life, see *Symposium to Honor the Work of Professor Ruthann Robson*, 8 N.Y. City L. Rev. 311-773 (2005).

the narrow confines of the law. Wouldn't your life be far more ordinary and simple than it has turned out to be if you had been able to confine your writing and your teaching to law, narrowly defined?

Should we aspire to have our students lead ordinary lives or lives that are complex? If life were set up so you could choose, behind some veil of ignorance, a life ordinary or complex, which would you choose?

And while we're talking about this twisted relation between ordinaryness and complexity, what contribution, in either direction, should we assume that a long association with law and with literature would take us? Or should we be trying to make any assumptions about this sort of thing at all?

**Robson:** By choosing to enroll in law school, and by choosing to enroll in your law and literature course, I would think students have already shown an attraction to complexity. One reason for a reluctance to engage in the discussion about choosing a certain kind of life may be a general discomfort with articulating large choices, but I also suspect the problem stems from a general romanticization of the simple life.

On balance, I'm not sure I actually believe that there are people who lead ordinary, simple lives. Having known many people who would be described as "simple" and many who would adopt the label as self-description, I don't experience them as ordinary or simple unless, that is, I make superficial judgments about them. Certainly, some of my rural and poor relatives seem simple, as do some of my friends who have adopted simplicity as a lifestyle for political or spiritual reasons. Yet, scratch them—or wait around until they scratch themselves—and complexity abounds.

Nevertheless, when one is running to catch a plane, dragging a laptop and carrying a satchel full of deadlines, life feels anything but simple. As you suggest, being involved in both law and literature may have made my life more complex, in part because there are ways in which the two endeavors are inconsistent and in part because there are only so many waking hours. Perhaps as compensation, I have made choices to have other parts of my life be less rich. I do try to plan some days that are objectively simple; an observer would find them absolutely boring. But while it may look as if I'm just sitting there staring into space, I'm probably at my most complex.

I think what your questions raise most for me, however, are issues of choice and privilege. You've taken on work editing the *Legal Studies Forum*, which is, much of it I assume, thankless and frustrating. And yet, you are clearly doing something you love and I'd venture you get satisfaction from it.

**Elkins:** I wonder whether you've not, implicitly, begin to outline the nature of our attraction to literature.

— We are attracted to complexity and we find that our attraction takes us to literature.

— We find in literature the making and living of large choices which we know are hard to articulate, and especially hard to talk about in the law school world.

— We take up with literature as an antidote to costly romanticization, whether it be of the simple life, the law, friendship, whatever it is we want to engage in soft thinking about.

— We find in literature a juxtaposition of the ordinary and the complex, the familiar and the strange, what we know and what we know as the unknown.

Ruthann, would you comment on what you find that makes law and literature inconsistent endeavors?

**Robson:** The only aspect I think I would like to make more explicit is the political. I think my attraction to literature has always been political in a progressive sense—I believe that literature can change the world for the better. Certainly, it is a naive position. At times and places, I think the potential has been greater than it is at present. I started my writing career being published in what was then called the underground press. I continued as part of the “women in print movement,” which overlapped with a lesbian and then a queer publishing milieu, and took place within a broader alternative press movement. I read and I wrote and I reviewed literature as part of those movements, movements I perceived as part of a larger push toward progressive social change.

It is in this sense of politics that I have always seen my own legal pursuits as consistent with my literary ones. To use one specific example: to represent the local battered women’s shelter and the local feminist women’s health center may call on different skills than writing creatively for publication in feminist literary journals, but the core motive, for me, is quite the same.

I continue to believe in an underlying seamlessness between my legal and literary pursuits, but it has become much more difficult to maintain that seamlessness. I’m fortunate to teach at CUNY where 95% of our graduates practice public interest law. But it’s clear that the forces of conservatism and capitalism have transformed, commodified, appropriated, trivialized, and attacked the legal and literary communities to which I belong. Today, far more of my energy that could be spent being creative must be expended in a defensive posture.

Some of the ways in which I experience law and literature as conflicting endeavors are rather mundane. Creating a world, even a world as compact as one found in a 30 line poem, requires uninterrupted time. Preparing for a class, even a class on cases one has taught fifteen times before, also demands uninterrupted time. Structuring a law review article and then writing it, requires quality blocks of time. I do feel impaired and slowed, at times, by the constraints of time.

Related to time is the mundane-ness of deadlines. Early on in my career, I received some advice from the poet and novelist Marge Piercy that I have followed without fail. She said that she never signed a contract for a creative work unless she had finished the draft to her own satisfaction. The rationale for this is simply freedom. Piercy’s advice was sound; I’ve witnessed many writers who submit plot

outlines and first chapters to agents and editors who provide so many opinions and suggestions that the result is the writers' work becomes unrecognizable. And the price is that a writer is not writing her book (but is writing the book that the editor and agent want), or in some cases, a writer is not writing any book at all, so stymied has the process become.

Less mundane, and thus more difficult to articulate, it seems to me that another inconsistency between law and literature arises in the difference in the quality of thought required by the two enterprises. It is not that literature does not have linear, argumentative, and structural characteristics; I think it does, and must. But literature draws on more ineffable qualities than law does. Some people would say emotional or subconscious or intuitive, but all of those words seem inadequate to me.

**Elkins:** In what sense does your attraction to literature as politics extend to your writing? Is politics a force across the genres in which you write or do you find yourself working in particular genres that are less political in nature? I wonder whether in your writing, there may not be times when you find yourself slipping away from, beneath, or beyond politics. We may, as intellectuals, know that literature is always political but I must say that's not the focus of my writing. I see my own writing as far less overtly political than you seem to view yours. Should I view the times when I read and teach as having little to do with politics as an illusion?

In what sense, if any, has your sense of politics been influenced by the Critical Legal Studies movement of the late 1970s and 1980s?

**Robson:** Certainly, I agree that the pleasures associated with reading and writing can have nothing to do with politics—and I don't think that is an illusion in any sense. Indeed, I think the pleasures of literature, as so many other pleasures, can be transcendent, if I may use an unfashionable word. To slip beyond one's time and place and even beyond one's self—how wonderful!

But perhaps even this pleasure is political? How have I come to be able to read and enjoy a particular work of literature? How am I able to write? What are the material conditions that make my reading and my writing possible? These are questions that I still ask.

As for Critical Legal Studies (CLS), I'm afraid it has not been an important political movement for me personally. I think I have found more resonance in the feminist and critical race theorists' engagement than I have with CLS.

**Elkins:** In regard to this idea about pleasure that gets us beyond politics, I refrained from using the term, transcend, fearing it's theoretical repercussions! So, I'm delighted to see you embrace the term.

Do you find, after years of fruitful reading and engagement, that even promising progressive theoretical movements, like feminist jurisprudence and Critical Race Theory begin to wear thin?

**Robson:** Yes, I'll agree with your implication that movements in the disciplines can wear thin. Some say they have been a "victim of their own success," which is a phrase I often hear applied to LGBT

movements.<sup>4</sup> But in some ways, this is what I meant when I was referring to appropriation and commodification. There are certainly real and concrete reforms that change people's lives, but even these do not approach the level of "revolution." (Since we have entered risky territory with "transcend," I thought "revolution" might also be broached!) And most of what happens is superficial and stylistic adjustments. Even so, I'm heartened by what I see happening, especially with the younger generation, even if there is too little happening to suit me.

Don't you find this connection we maintain with younger people a gift of teaching?

**Elkins:** I suspect that we both want and resist the kind of real and concrete reforms that change our lives. Many of us are forever stuck with an immobilizing ambivalence compounded of a need for security and the anxiety we associate with change.

You mention the energy of the young and yes, I know that teachers often describe their association with the young as a "gift of teaching." A good part of my early writing about legal education was an effort to discover, by way of my students, something about their experience of the world of legal education. I was curious about what brought them to law school, their experience as law students, and how they articulated the changes that took place as they undertook the study of law. I don't know that this work left me appreciating the energy of young people. My engagement with their world was more akin to that of an anthropologist who develops an abiding fondness for the tribe he has chosen to live with and to study. My intellectual world is, I suspect, radically different from that of most of my students.

In the way I imagine myself and my place in the law school, I know that I am a better teacher for some than I am others. Some students feel most comfortable and learn better when a teacher appears most connected to them, when the teaching is familiar and safe. Other students expect the teacher to be different, to have come from some far place, to bring into the classroom a sense of self and world that is different.

Most of my students over the years have neither sought nor desired any real connection. I do not see this as a failing on their part, or mine. In the friendships that do develop with students, I've experienced not so much the energy of the young but the pleasures to be found in friendship that comes from shared intellectual interests, a shared concern about education and how it works.

In the creation of your fictional characters, what kind of mix of politics, psychology, and ordinary life do you strive for? Or maybe the better question: Who do you want your fictional characters to be? What do you want them to be for the reader? Since I don't write fiction, I'm curious as to what kind of audience you envision for your fiction. Is this audience different when you write essays? How has your work as a novelist and short story writer affected your work as an essayist?

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<sup>4</sup> LGBT is a common abbreviation for Lesbian, Gay, Bisexual, Transgender.

I sometimes see your essay writing described as creative non-fiction. Some of us may be left wondering about this rather curious sounding label. What is it; why the buzz?

**Robson:** As for fictional characters (and some of mine have certainly been LGBT), I strive to know them—which seems a rather silly thing to say since I have created them. And I want the reader to know them, but also be provoked by them and engaged with them. I can say that I want the characters to be real, but I also want them to be more than real, in the sense that the inner lives of the characters are manifest. It is difficult to have every character with a complex inner life to which a reader is privy (mostly because of the structures of narrative and voice), but I think this is vital.

It is perhaps cliché to say I write for myself as my intended audience, but in the first instance it is embarrassingly true. Although in both fiction and nonfiction, I am cognizant of the communicative function of writing and want the work to be intelligible. I quite detest difficult work that is difficult out of pomposity.

As an essayist, I have translated some of the lessons from the craft of fiction, but also many of the lessons from the craft of scholarly writing. Essays interest me when truth and accuracy are most contested. I have turned to “creative nonfiction” when what I want to relate is unbelievable. For example, I understood from reading novels that a person dying in the first chapter does not suddenly and miraculously recover at the end of the book. Chekhov’s rifle and all that! The reader will feel cheated without the closure of death. Yet that was the story I wanted to tell. And so the essay, whether or not one called it creative nonfiction, seemed most amenable.

Regarding students, I am most interested in the ways they challenge the law and me. So, I don’t quite feel as if I am “inducting” them into a world, but more that I am introducing them to a world that they will change. My notions of “equality” and “sexuality,” to take but two examples, are quite different from their notions, but yet there are many commonalities. Moreover, because I am no longer practicing law myself, I am interested in the internship tales of students and the law practice “war stories” of my former students.

**Elkins:** Do you find that creating fictional characters affects, in some way, your teaching, or relationships with students and colleagues? Maybe I should put the question differently. How does being a writer affect your teaching? How does being a poet affect your sense of what you are do as a teacher?

**Robson:** These are incredibly interesting questions that have lead my thinking into a virtual epistemological labyrinth. Since I have always been deeply entrenched in fictional creations, I don’t know how my other activities such as teaching have been affected. I’ve tried to think counter-factually on this: if I weren’t a writer, how would my teaching be different? That strategy has been similarly unsuccessful.

I could enumerate several ways in which my teaching has affected my writing. There are those material conditions of which we were speaking earlier, but I have derived ideas for writing projects

in the classroom. I also think my writing (both fictional and scholarly) has benefitted from developing the skills that benefit a teacher—patience, clarity, and enthusiasm.

Additionally, I find that the same paradoxical ego is required for both pursuits: one must have an incredibly strong ego (how else to stand in front of 160 other human beings and believe one has something to say? or put pen to paper/fingers to keyboard?) and *simultaneously* one must have a mind-set of “no-ego” (teaching is not about the teacher and writing is not about the writer).

**Elkins:** The questions were, of course, easy enough to pose, but looking at them again, from your perspective, I see how they might well be unanswerable.

Your comment about the place of strong egos and no-ego in teaching leaves me wondering whether it is not an over-determination of ego that produces the arrogance and closed-mindedness we find in so many of our academic colleagues.

Ruthann, let me, for a moment, change direction. You have a far deeper and more abiding interest in theory than I do. You say in *Sappho Goes to Law School*, “I take theorizing extremely seriously. . . .”<sup>5</sup> Yet, elsewhere, you point out that doing theory can simply be “another name for thinking, for deciding, for arguing and examining one’s own beliefs and principles as well as the beliefs and principles we have been taught.”<sup>6</sup> I agree with this description of theory. However, I think you’d agree that most theorists don’t act as if all they are doing is thinking/deciding/arguing/examining belief and principles. Indeed, the most egregious violation of your straight-forward description of theorizing can be found in the work of the postmodernists, so I find it curious that you identify your theory work with postmodernism. How can you enter the language labyrinth of postmodernism and hold to the notion that theory is simply another name for thinking/deciding/arguing/examining?

In my case, I found that I simply didn’t have the time, energy, or inclination to translate postmodernist academic jargon for my own use. In pursuing stories and narratives, I further distanced myself from postmodernism. And yet, here you are, a storyteller and you’ve developed this affinity for postmodernism. Or have you simply mined postmodernism without developing any great affinity for it?

**Robson:** Yes, I strongly believe in theory and theorizing. But by theorizing, I’ve never meant postmodernist theorizing. The major pitfall of postmodernism, as I see it, has been a tendency to valorize language over meaning. I don’t think theorizing is meaningful when the idea being communicated is rendered in language that makes the idea seem more complex than it is. All the work, then, is deciphering the language. For me, the work of theory should be evaluating ideas. For

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<sup>5</sup>Ruthann Robson, *SAPPHO GOES TO LAW SCHOOL* 59 (New York: Columbia University Press, 1998).

<sup>6</sup>Ruthann Robson, *LESBIAN (OUT)LAW: SURVIVAL UNDER THE RULE OF LAW* 15 (Ithaca, New York: Firebrand Books, 1992).



sexual theorists, I think a certain obscurity has been part of the attractiveness of postmodernism—it does make certain aspects of sexuality seem less crude if the language is complicated. But perhaps this is too cynical on my part.

I've seen it as part of my work to make theorizing accessible, which is why I wrote *Lesbian (Out)law* in the form that I did. Theorizing is important to me because narrative can be partial. I know there is much work about the importance of narrative to theory, but I think there has been less work about the importance of theory and the limits of narrative. I have tried to do some of that work.

**Elkins:** You are a self-confirmed theorist, and, so far as my reading goes, a rather good one. And you are a narrativist. More accurately, we might say you're a practicing narrativist: You write and publish short stories and novels. Yet, you don't seem to have aligned yourself with the law and literature movement or with the legal storytelling and narrative jurisprudence substratas of the movement. Am I misreading your "movement" alliances?

I'm curious about your concerns about narrative expressed in *Sappho Goes to Law School*. You are, in a real sense, in up to your neck in narrative, and yet you go to some lengths to talk about the limits of narrative. I can't quite figure it out. Are you a theorist simply trying to be cautious, looking at all the angles? Where does your theorizing fit your heavy involvement in narrative? Do you really believe, at some level, that theory has the power to change the world and narrative does not? You have, I know, observed that you write scholarly work and fiction for the same reason: A belief "in the power of language to foment progressive change." Maybe you've been infected with doubts about narrative from your travels with the postmodernists? Do you want to avoid, for some reason, being associated with the legal narrativists?

**Robson:** I'm not trying to hedge my bets on narrative or even defend postmodernism. Instead, I think I have been frustrated when "stories" are presented as self-validating and self-explanatory; when the particular is presented as if it is an approximation of the universal. I find, also, that narrative can close down inquiry as well as open it up.

I also—and this feels rather risky to say—believe that there is a lack of appreciation of narrative amongst many legal theorists who deploy narratives. I'm not referring here to the analysis of texts by law and literature scholars, but the use of narrative in the form of anecdotes with the assumption that a vignette might be commensurate with a well-developed theory. Of course, I've included anecdotes in my own legal theory, and will probably continue to do so.

As someone who has written novels, I should say that narrative can be as disciplined, complex, and demanding of writer and reader as any theory. Of course, some theorists would not agree.

**Elkins:** I'm not sure what you mean when you say that stories are presented in legal writing as self-validating and self-explanatory. I guess I've never read them as being problematic in quite the way you describe. It's rather rare, I think, that we have stories presented in legal scholarship without being accompanied with explanatory commentary.

There is, from still another perspective, a sense that narrative and theory are radically different enterprises. And being different enterprises, each stand, in their own way, as self-validating and self-explanatory. Don't we think of a story, cogently presented, just as we do an argument: self-validating within the context in which it is presented? By self-validating, I don't mean to suggest that a story is true, any more than we are to take for granted that a particular theory is right. And I don't mean self-validating in the sense of quality: The quality of a story is always in question. I assume that we are *always* questioning stories because of the tacit knowledge we bring to them. The interesting thing about our most compelling narratives is that we want to think that they require no explanation.

I'm even less certain about the problem you associate with stories being presented as particulars that approximate the universal. I'd like to think—keeping in mind that this is Monday morning and I'm no theorist—that stories embody the universal, and represent the universal. I'm tempted to say they represent the universal as well as theory does. Maybe I should say that stories do what theory does but by a different means, by taking a different path. Or put more personally, I don't think I've ever felt particularly close to anything universal when I'm reading, exploring, contemplating, puzzling over theory. I get to that feeling much more directly when I'm reading and working with a good story. Isn't it fair to say, that story and theory, by different means implicate the universal, even as they each, in their own way, traffic in particulars?

On a more mundane front, I don't find anything in stories and narratives that prevents them from being read, or used, poorly. But wouldn't we say something of a similar sort about theory?

Finally, you note that as a novelist, you “feel that narrative can be as disciplined, as complex, and as demanding of writer and reader as any theory.” As someone who has never written a novel and most likely never will, I think you're right about narrative requiring discipline on the part of the reader. I think we see the point of your comment best when we try to teach stories—in my case, lawyer stories—to law students. When presented with stories—even those of no great complexity—many law students tend to read the stories as if, in being stories, there was nothing to be said about them. In their reading, it becomes clear that they have not developed a strategy for reading stories. Consequently, they cannot talk about stories in an engaging way. They have trouble getting beyond the surface of the story.

**Robson:** I agree with much of what you say. I do not want to conflate narrative with poor narrative when it comes to legal scholarship. I think where our point of disagreement lies is that I do not believe particular narratives are universal—or that they should be, or that they have built-in-explanations. (I leave aside here the question of whether the narrative impulse is part of human nature.) Instead, I think narratives are particularized explorations of particular people (or non-humans) in particular situations—and at their best they illuminate the ambiguities, the contradictions, and the un-theorizability of life. That they can cast light on more general circumstances is certainly true, and is certainly part of the work the reader does (or tries to do). Having students (or anyone) discuss and engage with a narrative can be pretty daunting, I agree.

It is not that I believe narrative is inferior or in any way subordinated to theory. Or vice-versa. But

I do not believe they should not be conflated. Conflation mis-serves both.

Interestingly enough, I am working on a piece which could be said to conflate theory and narrative in a form that Nicole Brossard names “fiction-theory,” and a form I find attractive.<sup>7</sup> In my own defense, I would say that the form does not conflate fiction and theory, but rather engages with them both, seeking to have them reverberate and reflect, or dance.

**Elkins:** You have a point about the conflation of narrative and theory being a prescription for trouble. Perhaps worse, in my view, are those who talk, write, and theorize about narrative with no indication that they have an affinity for narrative at all.

I’m interested in Nicole Brossard’s use of the term fiction theory. Fiction theory doesn’t, at least on first impression, strike me as descriptive of what you do in your essays. The real question, of course, is whether “fiction theory” is a good label for your essays.

I suppose there is a need, at times, to find new genre labels that make it possible to redefine and reimagine our writing. If these new labels make it possible to write in ways we have not previously written, then the new labels serve a purpose. Maybe there is an inescapable need for new categories of classification.

**Robson:** The more we talk and write about theory, the less I understand what we mean. And the same is true for narrative. And to complicate things further, I’d add that we haven’t yet confronted the lyrical.

Perhaps it is that I discovered Nicole Brossard’s work at a time in which it resonated for me. I found her work freeing in the way that it addressed the breaking of boundaries. She places lesbian writing at the center of her work, and I found that liberating.

Certainly, fiction-theory as a form is not really unique. In Philip Lopate’s mammoth anthology, *The Art of the Personal Essay*, he includes a table of contents of the essays organized by “form” and includes a “mosaic” form (the only entry being Richard Rodriguez’s “The Late Victorians”) and a form Lopate calls “Prose Poem and Reverie.” Either of those two forms could probably be used synonymously with “fiction-theory.” Brossard, I know, was not using fiction-theory to denominate only form, and that form does not animate Brossard’s work.

Whatever it might be called, I find the form attractive. Perhaps it is, because as you say, it is different from the more formal essay form that we teach our students to write (and then labor to read). But I also find that the new form, whatever we call it, can incorporate not only the narrative (as in story) and the theoretical (as in argument/essay), but also the lyrical.

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<sup>7</sup>See Nicole Brossard, *THE AERIAL LETTER* 73-76 (Toronto: The Women’s Press, 1988)(Marlene Wildeman trans.).

You seem to have a strong affinity for the lyrical, no? I cannot think of another legal publication that has devoted so much energy and space to poetry as you have in the *Legal Studies Forum*.

**Elkins:** I'm not at all sure that I'd want to equate theory and narrative as sources of misunderstanding. You might, although I can't be sure of this, agree with me that we're both more likely to know what we mean by narrative than what we mean by theory. We grew up with stories, and in growing up with them, we learned a great deal about them; we come to theory much later than we come to stories. You're right to suggest that in one sense, we are all, all the time, doing theory. But what we also is resist theory.

By narrative, I take it, we are talking about stories: Telling them, listening to them, writing them. And I don't mean at all to suggest that narrative and story-telling aren't to be treated as complex endeavors, and that as such, they don't or can't undergo the kind of theorizing we do about all the cultural constructs we erect and adopt for use.

I'm far more comfortable thinking about theory as you describe it in *Lesbian (Out)law*: "another name for thinking, for deciding, for arguing and examining one's own beliefs and principles as well as the beliefs and principles we have been taught."<sup>8</sup> But it's not the idea of theorizing as "something that we all do" that you have in mind when you talk about doing theory. I suspect that when you talk about theory and theorizing that you mean to be talking to other theorists. When you are talking to and about other theorists you may well be thinking/deciding/arguing/examining, but that turns out to be the half of it, the other half, and sometimes the more obvious half is, from my perspective, just standing toe-to-toe with other theorists, making for yourself a seat at the table where everyone purports to be doing theory.

Oddly enough, you begin *Lesbian (Out)law* with the notion that it is a work of theory, but I'm not sure, that it reads like a work of theory at all. In looking back on *Lesbian (Out)law*, is it, really a work of theory? I think I see it more as an active effort to uncover and unearth—to discover—the lesbian as a legal subject. Isn't *Lesbian (Out)law*, given the nature of what you were trying to do and the time in which it was being done, more descriptive than theoretical? It seems to me to be more a guide than it is a work of theory. I see *Lesbian (Out)law* as a kind of adventure travel writing!

I've not done the same kind of theory/non-theory rereading of *Sappho Goes to Law School* but on first appearance it seems to be far more theoretical in nature than *Lesbian (Out)law*. For example, your chapter on narrative might be read as theory, but again, it's an instance where the "talk among the theorists" takes up far more of the text than does theory itself. It would be an interesting experiment—and one which I do not intend to undertake at this point—to go through *Sappho Goes to Law School* and carefully map out the two ways of theory: theory you do vs. communicative talk between theorists.

I suspect that in your discovery and reading of Nicole Brossard's work there must be an element of

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<sup>8</sup>*Lesbian (Out)law*, at 15.

serendipity. I'd say something of a similar sort about my first reading of James Boyd White's oddly-colored yellow book, *The Legal Imagination* (published just two years before I started teaching). I had a real sense, even as a novice teacher, that White was pushing against well-established boundaries and that he was reorganizing the way we think about law, a reorganization I found liberating.

As we talk about the mosaic, fragment-style writing that you adopt in some of your essays, and now in some of your legal writing, I'm still trying to figure out why I find the form so attractive. But first, I'm simply going to try to find a way to describe this "new writing." It is writing with a presence of mind; it is fresh and sharp, lean and angular. It is pastiche, potpourri, medley, hodgepodge. It's the use of fragments as a fine art; the haiku of non-fiction; a genre of inscription. It is a print/old culture version of hypertext. Quotation is welcome but not required. Text and sub-text have their place. Footnotes can be a source of creativity. Meandering is expected. What is not said counts equally for what is said. The final product is an illusion, a preview of the greater whole that must—forever—await us. The new writing is the well-crafted pot, broken, and recollected as shards; the writer is an archaeologist. It's a craft we learn from the appreciation of fragments, from the work of writers like Sappho and Heraclitus that we find only in fragments. In the new writing, the author travels, and on her return, her prose becomes a travelogue. Our travels rendered in the form of poetics, reminds us, first and last, of what a nimble mind can do.<sup>9</sup>

On the "new writing" as you practice it, I find it elegant, economical, sensible, practical, crafty. It's prose doing the work of poetry, poetry for those who don't want to worry about the line breaks.

If you could tell me more about this notion of what it means to have an affinity for the lyrical, I might be willing to confess my sins.

**Robson:** Narrative does not seem more easily understood to me than theory. You are right, we grow up with stories. But stories, of course, can be true or fictive. I think I've always understood that there was something "other" than stories. Some of this other I would name "theory," as a way of describing the more generalized meaning a story might illustrate. Another "other" might be called the "lyrical"—the poetics, the images, even the *eros*—that might be evident in some stories, but are not necessary for a story, or for theory.

All this talk of forms! I do love your prose ode (now, what kind of form is that?) to the mosaic/prose poem/fragment style that I have been calling, perhaps accurately or perhaps not, fiction-theory.

If "form follows function" (Charles Olson, I believe), then the larger question is what are we trying

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<sup>9</sup> For our staunch traditionalist colleagues, the new fragment/mosaic/essay form is an excuse for aimless musing, hogwash (swill and slop). It lacks structure, argument, rationality. It's the excess of prose that oozes from the bilious writings of postmodernism. It's the prose equivalent of TV sound-bites; advertisements for goods not in stock. Fiction theory is a skeletal caricature, a prose travesty. It's the writer as trawler, doing treason in the name of language.

to accomplish by choosing different forms? Why does one form resonate for certain work and another form for other work? Certainly, the audience issue is important, but it is not always determinative. And yes, I do think writing must be accessible. (Something that drives the articulation of theory and the theoretical arguments/explorations most explicitly in *Lesbian (Out)Law*.)

The question of form is an incessant question. We discussed the form this piece would take, rejecting the interview in favor of a conversation. A conversation is a form that is quite familiar in some ways, but still odd in a written format. And authentic dual-authorship is a relatively rare phenomenon. Our conversation should also be distinguished from narrative dialogue (however purportedly true) or theoretical dialogue (Plato, *et. al.*).

**Elkins:** In your critique of narrative in *Sappho Goes to Law School*, you portray narrative as so riddled by paradox that we should, in law, be weary to turn to narrative. I'm curious about one of the paradoxes you attribute to narrative: "[W]e may be at the end of the period in which narrativity is a relevant undertaking." You go on to note, "[w]e may be telling our stories at the end of the story of story-telling."

I'm not sure whether your cautionary comments are directed to the turn to narrative in law, the promise attributed to the use of narrative in law by progressive legal scholars, or the theorizing that takes place under the name narratology and narrativity. If, in these comments, you mean to suggest that the interest in the theory of narrative is at its zenith you may well be right. If, on the other hand, you are suggesting that we've reached a political, social, cultural, psychological high-water mark in telling and listening to stories, that would be a rather extraordinary claim.

**Robson:** It's funny you should ask. Lately I've found myself rethinking the end of narrative posed by Sue-Ellen Case<sup>10</sup> and which I find less plausible now than I did when I read her book, *The Domain Matrix*. I find that what she names "screen culture" (meaning computer culture) has in many ways appropriated "print culture," so that rather than the end of print culture (and narrativity), we've seen real changes but not of the kind I once envisioned. Like so many others, I resort more and more to the Internet; I'm an avid participant in screen culture, yet the Internet is increasingly a narrative milieu. The diary-blogs are but one example. I'm now starting a one-issue stint as a guest-editor for an online literary journal, *Blithe House Quarterly*, where my narrative judgments are being augmented by considerations of screen culture but certainly not supplanted by them.

It seems to me the notion of content on the Internet is often interpreted as solely information, as if information is not presented in a narrative form. So, I'm pleased to have lived long enough to have changed my mind and rethink some of this. And yet, as I articulate these musings, I am led back to the idea that even narrative collapses into itself.

**Elkins:** Let's look at another genre in which you write. I was well underway with my work on lawyer

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<sup>10</sup>See Sue-Ellen Case, *THE DOMAIN MATRIX: PERFORMING LESBIAN AT THE END OF PRINT CULTURE* (Bloomington : Indiana University Press, 1996).

poets, when I discovered, to my pleasant surprise, that not only were you a legal scholar, novelist, and essayist, but a poet as well. Where does poetry fit into your life as a writer? Does your poetry have any bearing on your work as a legal scholar and law teacher?

**Robson:** Like many writers, my first love is poetry. I started writing as a juvenile and participated in the usual school activities in junior high such as the literary magazine and a creative writing course. Those early days as a writer have certainly shaped my life as a law professor, since I have used my teachers from that time as “negative role models.” I vowed not to be, as I found them, narrow, rigid, and without courage. The cultural context had much to do with my experience, since the late 1960s and early 70s were a time of great rifts and I placed myself on the side of what was then called the counter-culture. So, in a way I now see as unfortunate, I did not receive the guidance that would have benefitted me. On a more positive note, I became a regular published poet in underground magazines. I managed, during these years, to leave high school without graduating.

Poetry is also a first love in the sense that my ideas, phrasings, and impulses are often first expressed in poetry. I often find myself cannibalizing my poems in other work. At one time, I had doubts about doing this, but I’ve now reconciled myself to doing it. For example, I use the sentiment and the set-up from “poem to be read at my memorial service” (which you have included in the poems you selected for publication along with this conversation) in the novel I’m now writing.

Poetry is demanding. The close-reading of a poem is a perfectly good preparation for the close-reading of legal opinions, statutes, and regulation. The discipline of poetry, writing it and reading it, have certainly shaped me as a legal scholar and professor.

**Elkins:** I’ve never tried to make the case that lawyers and poets do related kinds of work. What I do know is that the place of lawyer/poets in our literary history is not well-known. I doubt whether most law and literature scholars could name more than two or three lawyer poets. They might come up with Wallace Stevens. He has achieved sufficient status as an acclaimed 20th century poet that his work as a lawyer for the Hartford Insurance Company is now common knowledge in literary and legal circles. Some law and literature scholars might recall that Archibald MacLeish was a lawyer. MacLeish published a speech in the late ’70s for a *Harvard Law Review* gathering in which he discussed his early days as a lawyer, the days before he abandoned the legal profession to become a poet, journalist, statesman, and librarian of Congress. And there might be the rare law and literature teacher who remembers that Edgar Lee Masters, of *Spoon River Anthology* fame, was a practicing lawyer (he was for several years a law partner with Clarence Darrow, and for some years they had another poet in the firm, Ernest McGaffey). A lawyer who travels in literary circles might remember that Charles Reznikoff, in his early years was a practicing lawyer, and later worked for a legal encyclopedia company.

My interest in lawyer poets was peaked a decade ago when I was writing a biographical essay on John William Corrington and I needed to say something—I didn’t know exactly what—about Corrington’s being a published poet before he became a lawyer. I wanted to learn what Corrington had to say about his years as a poet, but to put Corrington’s views into perspective, I turned to the literature on Stevens, and on MacLeish, especially the rather interesting *Harvard Law Review* in

which MacLeish talks about his life as a lawyer and a poet. Reading about Stevens and MacLeish, I began to identify other lawyer poets. I began with a small list, 20 or so, and then I began to find that you can't reading 19th century poetry anthologies without seeing that it was not at all unusual for lawyers to be poets. At this point, my work became a full-scale obsession: I set out to try to identify every lawyer poet in America's history. The list, and biographical profiles of that obsession, now, ten years later, stands at well over a 1,000. (And, along the way, I established that there are still hundreds of lawyers, who practice law, and write and publish poetry.)

Do you think this rich presence of lawyer poets in this country has any significance?

**Robson:** As I am write, my local public radio station is airing a program on composers, highlighting well-known and those not so less-known, who earned their living in fields other than music. So, perhaps one way of thinking about poets who are lawyers is that being a lawyer is a good day-job while one pursues poetry, which has never been a very profitable profession. I'd think this would be especially true before the proliferation of academic writing programs which now provide poets with work.

There is also the shared love of language in law and poetry. So that the fields are not so far apart as people tend to think.

**Elkins:** *Masks*, your first collection of poems was published in 1999. I'm curious if you have another collection in the works?

Some years ago, you were diagnosed—actually misdiagnosed—as having a fatal form of cancer. You've now written a number of essays about your illness and your encounter with the doctors. What was it, in and about your medical situation that resulted in your taking up—with a vengeance shall we say—the essay as a genre in which to address your medical situation?

My sense is that your illness essays are quite brilliant; I view them as the most compelling work you've done as a writer, which is all the more striking since you are an accomplished writer in all the genres in which you work. Where, in your view, do these illness essays lie in the overall scheme of your work?

**Robson:** In addition to being flattering (thank you!), your question seems to me quite insightful in making a connection between writing poetry and what you call the "illness essays." Many of those essays began as poems, and when I was referring previously to other forms cannibalizing the poems, I had those essays in mind. As I was recovering, I began to write poetry, and many of those poems appear in the essays.

Although I would also say that the illness essays to me, *are* poems. The poetic is the creative part of creative non-fiction, I suppose, or what I have viewed as fiction-theory after Nicole Brossard. Or perhaps these are simply long-poems. The line breaks, the phrasings, the "stanzas" are vital to me in these works, in the way that they would be in poetry. Although they are certainly not formal, there is a meter and a rhythm to these pieces, at least in the way I hear them and have tried to write them.



And before the illness essays, I wrote other similar pieces, a few of which appear at the end of *Masks*, and thus qualify, at least in that context, as long poems. (I would put the poem, “nightshade” into this category.)

I have continued to write poems, but I now publish poetry only occasionally. So, I do not have another collection forthcoming or circulating. In part, this is because I have found the subjects which I am pursuing work better in longer forms, such as the essay. As I work on a new novel, I find that I have far less time for essays.

**Elkins:** We’ve conducted this conversation over several months. We’ve talked our way through the final months of 2004, ignored the great disappointment of the Presidential election of 2004, and resumed the conversation in 2005. Now, we’ve got a printer standing-by, waiting for us to conclude this conversation. I’ve enjoyed this conversation and see it conclude with some regret.

It’s not it all a common thing for me to have a writer of your stature so ready and willing to carry on a conversation of the kind we have attempted. I don’t know whether I’ll ever be able to lure anyone else into an endeavor of this sort or not. It’s been a pleasure and I hope someday we’ll be able to resume where we left off here.

**Robson:** There is something so satisfying about a deadline and a conclusion, especially when it is not a real ending. I hope our conversation will continue, beyond these pages and beyond the two of us. Thank you!