

5-1-1984

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Irwin P. Stotzky

University of Miami School of Law, [istotzky@law.miami.edu](mailto:istotzky@law.miami.edu)

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### Recommended Citation

Irwin P. Stotzky, *Soia's Way: Toiling in the Common Law Tradition*, 38 U. Miami L. Rev. 373 (1984)

Available at: <https://repository.law.miami.edu/umlr/vol38/iss3/2>

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# University of Miami Law Review

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VOLUME 38

MAY 1984

NUMBER 3

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## Soia's Way: Toiling in the Common Law Tradition

IRWIN P. STOTZKY\*

Soia Mentschikoff was an absolute phenomenon. Discussing her in the abstract is a bit like attempting to explain the sport of cricket or the deterrence theory of nuclear strategy to a visitor from another planet: It sounds almost unbelievable. One had to experience Soia in all her levels of complexity even to begin to formulate a picture of the whole. She was a "happening" the likes of which the American legal profession had never seen before, and certainly will never see again. She was a singular person capable of the most remarkable feats. She was a living legend.

Soia possessed a combination of rare attributes which made her truly extraordinary. She was, first and foremost, an extremely gentle and sensitive human being. She cared deeply for people, and this was true even when she was in the midst of a struggle with someone who perceived her as the "enemy." In circumstances where most of us would have seen the worst in our so-called "enemy," where we would have been cynical and negative, Soia, as you might expect, rejected that base impulse. She always saw the best in the worst and, even after the most intense battle, left her defeated opponent with his dignity intact.

Soia's intellect was awesome and inspiring to behold. She was an absolute genius. Her completely original intelligence was unlike any that has ever graced the halls of the American legal profession. I used to hunger for conversation with her. Her views on the most important or mundane issues were filled with insights of which

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\* Professor of Law, University of Miami. This tribute is excerpted from the text of an address delivered by Professor Stotzky at a memorial service held for Soia Mentschikoff on June 29, 1984 at the Saint Augustine Catholic Church, Coral Gables, Florida.

lesser intellects could only be in awe, and she constantly questioned the unquestionable "truth."

The kind of event I have in mind is a discussion of the importance of skills in legal education. Soia and I had been invited to the Delaware Law School to consult with the faculty and students on curriculum, teaching methodology, and scholarship. Unbeknownst to me, our first afternoon on the visit included a speech to approximately 250 judges, law professors, lawyers, students, and other interested parties. Soia delivered a speech on the incompetence of everyone in the hall, save a few, specifically mentioning my name, in the craft of law, using the example of the inability of most lawyers to brief cases. At first, the audience was simply astonished; they could not believe that anyone would either challenge their competence or offend them in this way. But Soia delivered a simply eloquent and moving speech which employed the briefing format she taught in *Elements* to formulate a theory of law and law training.

The main focus of Soia's speech attacked the false dichotomy between theory and practice. To Soia, theory and craft were intertwined and essential concepts of the process of learning to become an artist in law. She envisioned the intellectual side of the art of law as emanating from and being directly responsive to the technical skills of the lawyer. Solid law training, therefore, must consist of a true liberal arts education. It was the duty of law teachers and law schools to impart to students what Karl Llewellyn referred to as the "threefold cord" of a competent legal education—the technical, the intellectual, and the spiritual. Since most law schools failed to meet this burden, it followed that most of the assembled legal luminaries lacked the basic competency of the artist in law. And Soia employed the allegedly uncomplicated rote-like process of briefing a case to make these points. The reaction to her speech was spontaneous and overwhelming. Her insights turned an initially hostile crowd into an adoring set of fans. Her analysis rang so true to experience that many of the assembled luminaries rushed up to the podium to ask her if they could learn how to brief cases in the same way as she had just described it. She became the eternal intellectual light of that law school community. I sat next to Soia, embarrassed by her reference to me, dumbfounded by the audience reaction, but certain that she had moved the crowd in wholly unexpected ways.

Soia was totally dedicated to whatever task she was performing. Whether it was teaching, writing, working on cases, campaign-

ing for legal reform, or merely inspiring colleagues and friends, Soia was a true "jobber" in the best sense of that term. She became completely absorbed in the task at hand; she could not let go of it until it had been worked out to what she considered to be "perfection." But, since "perfection" was an unattainable goal, she could never let go of a task until she was forced to because of an artificial ensuing deadline or because of some other absolute bar to continuing the project. She settled for nothing less than perfection in all aspects of her life, and she expected those who had the ability to reach for the same star. Anything less was simply unacceptable. Her dedication, her striving for excellence, inspired others to do the same. We all sensed this great and unusual ability of hers to push us beyond what we never imagined that we could reach. That ability was truly a part of her genius.

Perhaps her most extraordinary trait—the trait that made her an absolutely brilliant lawyer—was her ability to convince you of the correctness of her position or point of view. No matter how strong your argument seemed to be, no matter how convinced you were of the correctness of your views, Soia had the skill to make you see that you really agreed with her, that your position was really the same one that she held. And in the process of convincing you of the correctness of her position, she transformed you into an ally, not an adversary.

Her power to convince even the unbelievers stemmed directly from Soia's unique ability to step into another individual's shoes and to see through his "lenses." While most mortals are limited in their perceptions by their experiences, Soia possessed the uncanny ability to go beyond her own narrow experiences and to view the whole of a problem. Indeed, it is no exaggeration to say that Soia's truly exceptional lawyering skills were immeasurably aided by her ability to look through the full universe of "lenses" to gain a picture of the whole, to discover what moved a particular individual or institution, and to craft the facts of the case into the relevant framework to achieve the desired results.

Soia also had the one absolutely essential attribute of greatness—she had heart. I do not quite know how to describe what having heart means. I do know that anyone who knew Soia knows that she had heart. One knows it when one sees it even if one cannot define it.

Soia did her law work with disciplined passion. Her intensity was contagious. She also had great vision. She knew instinctively which way was the right way. She always went straight to the heart

of the problem.

Soia believed in tradition. In her legal mind-set, she believed deeply in the common law tradition. She cared deeply about training law students to become part of that tradition. The changes she brought to the first year curriculum at Miami were designed to steep the students in that tradition. Courses in Elements and Tutorial were to her the first steps into the "tradition." They were seen by Soia as indispensable courses within her theory of law training. To Soia, law was not a passive body of doctrine waiting to be discovered by legal decision makers. Law was the activity of human beings performing law-jobs. It included all the stuff of life—culture, economics, politics, art, inter-personal relations, and so forth. Law was "not written in tables of stone but in fleshy tables of the heart." What students needed to learn were the skills necessary to perform these law jobs, the theory within which the tasks were to be performed, and the "vision" necessary to perform within that tradition. Soia believed passionately in following this vision of the common law in legal education as well as in law practice.

But her belief in the common law tradition certainly was not a rigid, narrow belief that saw the adversary system as the "best" system ever devised by man to resolve disputes. Her collaboration with Karl Llewellyn on the Uniform Commercial Code, both in the drafting and in the advocacy needed to assure its adoption in almost every state in the Union, her studies in commercial arbitration, her work with the Pueblo Indians, her role in the creation of the Legal Services Program of OEO, and in working with different ideas in legal education, such as her unflagging support of the Antioch Law School, all showed that pioneering spirit of working within tradition to blaze a new trail. These projects, along with innumerable others, showed her strongly held belief that by constantly searching for new visions of the legal universe, one helped to add insight to the tradition and helped to inspire those struggling within that universe to find their own way while building on that tradition.

Nothing about Soia's mind was narrow. She fully understood the importance of diversity in legal thought as well as in any other discipline. Indeed, one of her most extraordinary talents was her ability to encourage others to find their own way in the pursuit of excellence, rather than to follow the well beaten, "acceptable" path.

Soia was also an optimist; she was always determined to see

the bright side of things in life, law, or politics. Where I tended to be somewhat pessimistic in my beliefs of the political and legal structure of this country, Soia stubbornly refused to give in to my perceptions of the facts. This became most apparent in our discussion of the incarceration in "camps" for over a year by government officials of approximately 2,000 Haitian refugees seeking political asylum in the United States. We vigorously debated the entire issue of immigration. The most intriguing question we put to ourselves was this: How well did law stand up to the challenge posed by the immoral treatment of Haitian refugees by Federal government officials? My response to this query was, as you might imagine, negative and cynical. Soia, on the other hand, believed that, ultimately, justice would prevail. She searched for and seized every glimmer of strength and integrity in the legal system. She fought the easy answer every step of the way. Although I held strongly to my beliefs, for I too am very stubborn, Soia's sentiment to see the bright side of things was the correct and nobler one. And her instincts were also correct: Haitians were ultimately released from their imprisonment by a court decree.

Soia brought all of her remarkable abilities—her gentleness and humanity, her intelligence, her dedication, her passion, her pursuit of excellence, her ability to complete the impossible task and, most of all, her heart—to the task of transforming the Law School into a great one when she became the Dean at Miami. Nothing need be said about the success she had in making Miami into a first rate law school. All of us who worked with her on this extended project have their own precious memories of those years. When I think of those years that we shared together, I am reminded of the role she played in the life of my mind and legal career.

I came to the University of Miami School of Law in 1974, directly upon graduation from the University of Chicago Law School. I had been a student of Soia's at Chicago and, as Soia put it, I was "chosen" by her to help right the course of the Miami law school. I was hired to be an Instructor, a teacher. As it now seems clear to me, the idea that my time at Miami would largely be spent as a teacher was an entirely misleading concept of the enterprise that I would be engaged in for the next ten years. In retrospect, it is clear to me that I came to Miami not to teach, but to learn. I came to Miami to begin an apprenticeship; Soia was the teacher and I was the apprentice.

I cannot begin to describe all of the things that I learned from

Soia. I am not sure that I am yet fully capable of comprehending the entirety of that experience. When I think of those years that we shared together my mind is a kaleidoscope of intimate memories.

I remember the *esprit de corps* that was instilled by Soia in the original group of Instructors. We saw our role as a divinely inspired mission to develop skills in students opposed to any new ideas. We saw ourselves working within an intellectual context that rejected our legitimacy and was hostile to our very presence. We thirsted for those weekly meetings with Soia, where we could expose our uncertainties and gain strength through our conversations with Soia about our jobs at Miami. Each meeting was an inspiration to continue in our struggles; each meeting renewed our faith in the importance of our enterprise.

I remember the fondness Soia had for the students, the total commitment she made to provide them with the finest legal education in the country. She believed in rigorous competition, but always helped those who somehow could not perform at the highest levels of skill. To Soia, one's worth was not based solely on one's grade point average in law school. She struggled valiantly to find the best in each individual, and sometimes she found a diamond in the rough. Always, however, she inspired students to do the most they could with whatever capabilities they had.

My most vivid memories of Soia concern our several year collaboration on the Elements casebook and teacher's manual. I remember the hours of debate about the structure of the materials, the arguments about its contents, the days, weeks, months, and years of work it took to put the books into acceptable form. But with all of these memories, one particular event—which has nothing whatsoever to do with the intellectual content of the work but which shows another aspect of Soia—stands out from all the others in bold relief.

After detailed discussion with Soia, the task fell on me to prepare the initial draft of the manuscript. As you might imagine, I was more than a bit apprehensive that Soia would read these materials, tell me that they were terrible and should be torn up and deposited in the nearest receptacle and that I was simply not worthy of the task of completing the manuscript. To put it another way, I lived in constant fear that the draft would be totally unacceptable to Soia. Soia, of course, knew exactly how I felt. But for some reason never made clear to me, she constantly put off our appointments to sit down and work through the manuscript. This

avoidance technique went on for several months. I was becoming increasingly tense. Finally, she agreed to meet with me to discuss the draft. Approximately one week before the appointment, however, I learned, much to my chagrin, that Soia would not be in town on the sacred date. Instead, Soia would be vacationing in Maine. I decided that her vacation would not deter me from making her discuss the manuscript with me. I booked passage for Maine.

Soia preceeded me to Maine by several weeks. When I arrived in Maine, I was shocked to find that Soia had already returned to Miami. I decided to stay in Maine and vacation. What else could I do? Upon arriving at my hotel from the airport, I was greeted by a real estate agent who told me that "poor Mrs. Llewellyn" wanted me to look at a house for her and determine whether it was worthwhile to purchase. She also told me that "poor Mrs. Llewellyn" had told her that I was a famous author who badly needed a rest after working intensely for a long time on a very important project. I finally got the message. I toured the house, reported on its value to Soia, and rested in Maine. She never once mentioned the manuscript while I remained in Maine. She never once mentioned the entire incident even after I returned to Miami.

There are, of course, so many other things that can be said about Soia. But, even if it were possible to describe all of the complex dimensions of Soia's life, that description would necessarily leave so much unsaid; it would miss so much of the essence that was Soia. Words can never capture the excitement, the joy, the spirit that was Soia. I know that Soia would want me to think not of the loss, the extraordinary loss, that I feel, but of our fascinating, wonderful times together. It is extremely difficult for me to do this but, as always, it is Soia's way—the correct way!