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4-1-1984

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Recommended Citation

E. Allan Farnsworth, Edward T. Foote II, Richard G. Huber, and Alan C. Swan, *In Memoriam -- Soia Mentschikoff*, 16 U. Miami Inter-Am. L. Rev. 1 (1984)

Available at: <http://repository.law.miami.edu/umialr/vol16/iss1/2>

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Soia Mentschikoff
(1915-1984)

SOIA MENTSCHIKOFF AS REFORMER

E. ALLAN FARNSWORTH*

When Soia Mentschikoff died, the *New York Times* reported that law students at Miami had sometimes referred to their dean as the *tsarina*. We can assume that they had in mind Catherine the Great. And indeed the two women — at least in their public lives — were not without parallels.

I have been told that I was not welcomed very joyfully when I first appeared because a son was expected.

This Catherine recorded at the beginning of her memoirs. Surely, Soia in her early career must have often felt that she would have been more joyfully received had she been a man, but neither Catherine nor Soia allowed herself to be thwarted by the accident of gender.

Other resemblances come to mind: intelligence, intellectual curiosity, self assurance, elemental energy, personal magnetism, a tendency toward autocracy, and — perhaps most of all — an urge to reform. For surely, it is as a reformer that Soia would choose to be remembered. Indeed Soia, the Russian-born reformer, found a more hospitable reception for her efforts at reform in America than Catherine, the German-born Russian reformer, found in Russia.

As Associate Chief Reporter for the Uniform Commercial Code, Soia made her unique and lasting contribution to American law. With the passage of time and the virtually universal enactment of the Code we tend to forget the uncertainties that surrounded the birth of the Code. When the New York Law Revision Commission held its hearings on the Code three decades ago, the Code's future depended largely on favorable action in New York. A "uniform" commercial code without the leading commercial state would have been unthinkable. Was the Code impractical? Was it too ambitious? Should it be dismembered into separate statutes? Together with her husband Karl Llewellyn, the Chief Reporter, Soia fended off such suggestions.

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Catherine had a statue of Peter the Great inscribed *Petro primo Catharina secunda*. And so it often seemed that in the Code enterprise it was *Carolus primo Soia secunda*. (Indeed, when Chicago enticed Karl away from Columbia, it satisfied its anti-nepotism rule by naming Karl a "professor" and Soia a "professorial lecturer"; only on Karl's death did Soia become a "professor.") But in terms of vigor and eloquence in defending the Code, Soia was second to no man, including Karl.

Historians tell us that Catherine "mastered the art of cajolery" and was "always conscious of being on a stage." Soia's persuasiveness on her feet did much to advance the cause of the Code. Those who would appreciate her style of advocacy could not do better than to study the report of the New York Law Revision Commission's 1954 hearings on the Code, where Soia, in the absence of Dean William Prosser, the drafter of Article 3 on Commercial Paper, defended that article against the criticisms mounted by the eminent New York law firm of Milbank, Tweed, Hope & Hadley, counsel for the Chase National Bank — criticisms that in Soia's words indicated

clearly that the practice of at least one large bank is, at least in part, being conditioned not on the reality of case or statutory law, but upon a never-never land of imagined law.

With amendments, New York ultimately adopted the Code and the success of the Code enterprise was assured. Soia retained her connection with the Code by serving as Consultant to the Permanent Editorial Board.

In later years, however, Soia's interests turned increasingly to the international aspects of commercial law. In 1964 she was one of the representatives of the United States to the diplomatic conference held in The Hague to consider a uniform law on the international sale of goods. After this, she advised the Department of State in the fields of international sales and international arbitration. My last association with Soia was in connection with a major international arbitration in which we were both to appear in London this past March as expert witnesses for one of the parties.

Her testimony was to deal with what she regarded as the proper reading of the Code's "good faith" provision. Unfortunately, she was unable to make the trip because of an operation earlier in the year, but with characteristic devotion and persistence she retained the hope that she would be able to give her testimony

in Miami. Indeed, it seemed at first that this might be the case: according to one report of her recovery "she was out of bed and ordering people about." But it was not to be.

It is not given to us to know whether the next world is in need of reform. Should it be, we can be confident that Soia is in the forefront of the enterprise.

SOIA MENTSCHIKOFF

EDWARD T. FOOTE II*

Soia Mentschikoff had a way of entering a room. Whatever was happening in that room changed instantly and remained changed until she left. You had to experience this to understand it. Suddenly, there was an excitement. People looked at her, the pace of the conversation quickened, things in that room became strangely more interesting, whatever they were.

It was in 1973 that I first noted this unusual effect she had on people. I was the new dean of the Washington University School of Law. Professor Mentschikoff was then in transition from the faculty of the University of Chicago to become dean of the University of Miami School of Law. Attending a national convention of the legal education clan, I was sitting in the back of a crowded meeting room. The subject was a typical convention sizzler, although I can't recall what, say, law library accreditation standards or how college presidents swindle law schools of hard-earned dollars.

She walked in without saying a word, but 200 people noticed. She locked those eyes, those transfixing blue eyes, on the speaker and just listened to him for a long time. People coming in and out of the meeting greeted her and she responded warmly, but her eyes and mind never left the speaker until he finished. When he did, she moved to the microphone. Even before she started to talk, I began to understand why she was known as a genuinely great teacher.

She paused as she looked over the crowd of deans and professors, many of them her former students. She let the quiet come, she said nothing, she nurtured the quiet and magnetically riveted the attention of the room on her and her alone, on her eyes. When she began to speak it was so softly that there was no clear moment when the silence ended and her words started. Then the words came faster, still quiet, so quiet you had to strain to hear. They came faster. She leaned forward, her hands darting quickly in emphasis. The stuffy room was suddenly alive with words and ideas,

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images, sentence after rolling sentence, still quiet but absolutely compelling.

It was a performance I would see many times over the years in different variations. It was always fascinating, even when the thrust seemed wrong, or worse, was contrary to one's own dearly held position and, word by word, pause by pause, she seemed increasingly right. Her candor shocked the more for being so gently said.

Since her death, I have wondered often what it was that made Professor Mentschikoff so special. Others will have other lists. She did so much. Others will praise her scholarship, her pioneering passages as the first woman here and there, or her leadership at the bar or in commercial law for so very long. For me, it was her teaching.

Professor Mentschikoff above all, above the writing, above even her powerful advocacy, was a teacher. She loved her students, all of them, even when she flayed them for offering less than their best. No educator I've known has said goodbye at commencement as she did. She comprehended, intellectually and symbolically, so much of the law.

When she spoke to her graduating seniors, it was as if the law itself, through this extraordinary servant, was engulfing its newest servants in trust and hope, challenge and solemn responsibility. And all present, from the editor of the Law Review to the class clown, from old judges to jaded attenders of countless academic convocations, felt intellectually refreshed and emotionally recharged. Her unabashed commitment to the law was deeply touching.

* A great teacher helps people think for themselves, but does more. A great teacher touches deep places in students beyond thinking. Professor Mentschikoff was as rational as any lawyer ever was. She could be frighteningly rational. But her greatness, as teacher, friend and leader, was in the rare combustion of that intellect with her other qualities of fierce bonding to important principles, driving discipline, and belief in the ultimate goodness of people. She believed in what she could do, and should do, and it was infectious.

What we particularly remember is what she believed the rest of us, especially her students and colleagues, had the capacity to do. She never let us off the hook, whether in reciting a case or

building a university. So often we surprised ourselves, because as a gifted teacher she had given us so much more than we knew until later.

SOIA MENTSCHIKOFF

RICHARD G. HUBER*

Friendship that is strong, selfless and persevering ranks among the truest satisfactions we can enjoy on this earth. Its memory still gladdens us when such a loving friendship, and such a magnificent friend, has died. To those to whom Soia Mentschikoff gave her friendship, her death brings tremendous sorrow but, still, we have the consolation that our lives have been inescapably and greatly enriched by knowing and loving her. To us, she will never truly die until we do so ourselves.

Soia had a particularly forceful presence. This was surely the product of her intellect, of her reputation, of her physical being, but beyond those, of her very compelling personality. We all have a number of dear friends but, to me, Soia was unique because I clearly recall every meeting with her as well as every telephone call. This was surely a product of her intensity; equally, it occurred because you were at that time the object to whom she was fully attentive. Her eyes, her voice, but particularly her inner sense of commitment to you made each visit a special one that set it out from the rest of your life.

I first met Soia when I was a graduate student at Harvard Law School. The graduate students had invited Karl Llewellyn to spend an afternoon and evening with them. Soia, of course, was with Karl then, as she was the rest of his life. And she charmed us all, as Karl did, with her interest in us, in what we were doing, and by her thoughtfulness. I can see her now as vividly as I did that spring day in 1951.

I hear her so very clearly also on the Monday before she died, when I had what must have been a tiring telephone call with her. She expressed hope, although she knew her illness was unconquerable. We laughed in fact over her statement that this long-drawn-out, painful illness did not suit her temperament and personality. We discussed our families, hers being so dear to her. When I told her I might be leaving the deanship of Boston College Law School in a year, she gave me a lot of advice. Those who knew her will

* Dean and Prof. Boston College Law School. b. 1919. B.S., 1942, U.S. Naval Acad.; J.D., 1950, Iowa; LL.M., 1951, Harvard.

understand when I say it was advice both detailed and excellent. Ill though she was, she felt the obligation to use her limited strength to help a friend. Who could gainsay that this was a pure example of her selfless and deep interest in one of those to whom she gave her friendship.

Other memories are strong. When our law school was debating whether a woman could really be effective as a legal educator, she called and recommended Mary Ann Glendon. Later she reminded Mary Ann to recommend Cynthia Lichtenstein to us. Most people would not think of Soia as a conventional feminist but no one believed more strongly that quality in a field, particularly the intellectual one, had no relation to gender. Those she recommended to us, as well as those she recommended elsewhere, are testimony to her judgment and to her conviction that women could do as well, and some probably better, than men.

In 1973 Soia gave the commencement address at Boston College, the first woman to do so in the then 110-year life of the university. Her reprimands were gentle but clear, and her message exhibited that fine blend of the intellectual and the practical that marked her entire life.

Memories continue to come as I write. Thus, this message, which must be brief, could run on for many pages. Soia provided us all so much pleasure, even as we held her in awe. Few people ever successfully were able to say "No" to Soia. She was a political person but totally open, honest and even transparent. You always knew what she wanted, why she wanted it, and what you could do and were expected to do, to help her attain that objective. This was not always a help to her as an administrator but it was a true virtue to her friends.

Soia's place in law as a scholar, lawyer, teacher, administrator and practitioner will never dim. To everyone who even knew her remotely she provided a model. As with all models, she had her critics as well as her admirers, since her very prominence and the strength of her views encouraged others to consider very carefully what she said and did. But to those of us gifted with her friendship, she will always be, firstly and most importantly, a major part of our lives.

Soia was not a letter writer and not much of a casual telephoner. It was an unusual week, even when I had not heard from her for two or three months, that I did not think of her, wonder

how she was, hope to see her soon and remember her with some of her other friends. We have lost a person of great importance to us. Fortunately, however, we also retain the sense that we were uniquely blessed with her friendship and that this unique blessing will continue to console and strengthen us throughout our lives. Tears, surely, but proud and happy memories, too, constitute her heritage.

SOIA MENTSCHIKOFF A TRIBUTE

ALAN C. SWAN*

The death of Soia Mentschikoff has, as one might expect, evoked an outpouring of tributes to an altogether remarkable woman. The accolades speak of a career dedicated to the improvement of American law and American legal institutions, of extraordinary intellectual powers, of successes garnered and of untold numbers of lives touched and changed. On this latter point especially, the tributes picture a woman with a seemingly inexhaustible capacity to care deeply for her work, for the institutions she served and for the people encountered along the way. All of this has been said and there is little to add. What has not been so well marked, however, is the manner of the telling. There is scarcely a tribute to Soia, written or spoken, that doesn't reach back for some recounting of a moment in which the words and actions of this extraordinary woman seemed to say more than could otherwise be told.

There are stories to illustrate her legal prowess. I still remember the day in Professor Karl Llewellyn's Elements class shortly after he and Soia had returned from hearings before the New York Law Revision Commission on the U.C.C. Karl could talk of nothing other than how "The Mentschikoff" had stood toe-to-toe against a phalanx of Wall Street lawyers whose clients, the big banks, opposed much of the U.C.C. and how she had bested them all.

There are the stories about her work on the American delegation to the International Sales Convention, especially her manipulation of the Russian delegation. Two winters ago, in Stockholm, I listened while she talked with some of the world's leading figures in international arbitration. She recalled the studies done at Chicago 25 years earlier, and deftly manipulating this material, posed questions and offered theories about international arbitration that had her auditors thinking about things they had scarcely thought of before. Even at the end, the story was told of a distinguished

* Prof. University of Miami School of Law. b. 1933. B.A., 1954, Albiou Coll.; J.D., 1957, Univ. of Chicago.

member of an arbitral tribunal who, having had no prior acquaintance with Soia, was so impressed with her contribution to the work of the tribunal that only a last minute emergency prevented him from flying the Atlantic to attend her funeral.

Then there are stories of dedication to tasks undertaken; the "hard-hat" stories and the cleaning of the student lounge the night before registration. I remember, as though it were yesterday, receiving a summons to the Dean's office just before we were to hold a conference on the agreements settling the hostage affair with Iran. Soia wanted to know if everything was in readiness. My assurance, however, was not enough. She strode from her office and for the next two hours we pushed tables around, reset the chairs, tested the microphones, called in the painters, scouted for potted-palms all the while arguing the details. Everything had to be right and for the tenth time she repeated her definition of a Dean: "the guy who gets paid to stay and turn off the lights."

So, the stories go on revealing more perhaps than any other measure of the woman. That those who knew her feel compelled to tell stories, speaks to their sense that she was somehow larger, more complex, more interesting than any catalog of offices, honors, degrees and other accomplishments could ever express. Stories are the stuff of legend and we reserve for legend those few who stride across our way larger than life.

Soia was a public figure. Yet her public achievements fail to say enough. In her public life she touched so many in such very private ways. And it is the stories, the stories alone, that tell of this possibly the richest dimension of our time with her.

Soia was authentic. Oh, she could manipulate! She never stopped. But even as you were being manipulated, you sensed that she cared. She was pursuing a cause, some greater goal. She cared about that goal and cared about you and how you might fit in or stand in the way. Soia could rebuke; but her rebuke was never mean or for affect. It was real and for a reason that counted. Soia could judge and judge harshly. Yet never in my lifetime have I been witness to so many judgments so fully vindicated. And Soia could love: her work, the institutions she served and the people around her. There was, in it all, an authenticity that only the stories could capture.