IN THE BEST INTERESTS OF THE CHILD. By JOSEPH GOLDSTEIN, ANNA FREUD, ALBERT J. SOLNIT, SONJA GOLDSTEIN. [New York: The Free Press. 1986. xix + 286 pp. Hardcover: US$16.30]

IN THE Best Interests of the Child is the latest volume from a team of "theoreticians of law and psychoanalysis"[1] regarding the best interests of children in custody and placement situations. The two prior volumes, *Beyond the Best Interests of the Child*[2] and *Before the Best Interests of the Child*[3] stressed, respectively, the danger of attributing "magical powers" to professionals involved in the placement process and "the importance of considering 'what a child loses when he passes, even temporarily, from the personal authority of parents to the impersonal authority of the law.' "[4] The present volume, growing mainly out of the Child Placement Conflicts Seminar at the Yale Child Study Center, focuses on situations where nonparent participants involved in the child placement process (*e.g.,* lawyers, judges, and social workers) succeed or fail at staying within the limits of their training, authority or knowledge.[5]

Before examining the authors' most current thesis, it is important to note that serving "the best interests of the child" has been the traditional goal of state intervention on the private ordering of the parent-child relationship in the United States.[6] In Singapore as well as England, Guardianship Acts also provide that the welfare of the infant shall be the first and paramount consideration of any court engaged in a proceeding involving the custody or upbringing of an infant.[7] Thus, a judge in the High Court in Singapore must "put himself in the position of a reasonable and wise parent and determine what would be best for the infant..., not what a selfish parent wants the infant... to have;" all relevant factors are considered *only* from the point of view of the child's welfare.[8]

In *Beyond the Best Interests of the Child,* the authors proposed an overall guideline to replace the "best interests" standard — " 'the least detrimental alternative for safeguarding the child's growth and development.' "[9] The authors theorized that the "best interests" standard (a) did not convey to the decision maker the urgency of the child's situation and the risk to which she/he already was exposed; (b) balanced the child's interests against or subordinated them to an adult's interests; and (c) resulted in decisions that were " 'in name only' " for the best interests of the child.[10] They saw their proposed standard as, *inter alia,* "reduc[ing] the likelihood of [legislatures,

1 Preface p. xxi.
2 New York: Free Press, 1973 (new edition 1979).
3 New York: Free Press, 1979.
4 *Before the Best Interests of the Child,* at p. 6.
5 At p. 7.
6 *Beyond the Best Interests of the Child,* at p. 4.
7 Guardianship of Infants Act, Cap. 122, Statutes of the Republic of Singapore, Rev. Ed. 1985, s.3; U.K. Guardianship of Minors Act, 1971, s.1; see also Ahmad Ibrahim, *Family Law in Malaysia and Singapore* (2d ed. 1984) at p. 171 and Susan Maidment, *Child Custody and Divorce* (1984) at pp. 13–14.
8 Khoo Oon Soo, *Parent-Child Law in Singapore* (1984) at pp. 107–08 (footnote omitted).
9 *Beyond the Best Interests of the Child,* at p. 53.
10 *Ibid*., at p. 54.

courts and childcare agencies] becoming enmeshed in the hope and magic associated with 'best', which often mistakenly leads them into believing that they have greater power for doing 'good' than 'bad' ".[11]

In the present volume, the authors explore the component of their suggested "least detrimental alternative" "which mandates that placement decisions take into account the limits of knowledge about child development and the law's inability to supervise day-to-day parent-child relationships."[12] In part one of the book, the authors distinguish the parent, the ."quintessential generalist," from the various professionals who assume parts of the parental task when it is broken down and assigned piecemeal during the placement process.[13] They also note the difficulty in separating personal values from professional knowledge and "distinguish[ing] both of these in turn from the societal values embedded in the law."[14]

Part two of the volume, "The Ambit of Professional Competence," begins by warning professionals engaged in the placement process not to enter the domain of other experts or fail to acknowledge the limitations of their own expertise. The authors demonstrate their point through various case studies. In one divorce case, for example, a judge, according to the authors, acted as a psychologist and "us[ed] his own courtroom observations to determine the emotional make-up" of the mother and father — observations he then utilized in his custody ruling. The authors criticized this judge for (a) straying beyond the ambits of statutory guidelines which limit further inquiry into relative degrees of parental competence to instances where there are two primary caregivers and (b) making his findings on such a basis without asking counsel to present evidence regarding each parent's personality and its impact on the child.[15]

One point with respect to the latter error is probably the most telling observation in the entire volume — the failure to recognize the necessity of expert testimony regarding human behaviour. The authors note the two attitudes which foster this "blind spot." The first relates to the complexity of human relationships and the belief that a court hearing cannot educate a judge sufficiently to make a decision. The second attitude is the antithesis of the first and emphasizes the "ordinary knowlege" aspect of human relationships and, consequently, the absence of any need for experts to assess either the parent's or the child's conduct.[16]

Although the authors caution against acting outside the ambit of one's discipline, they also claim that what professionals learn from each other's fields of expertise can foster a more effective child

11 *Ibid*., at p. 63; for reviews of this earlier volume, see *e.g*., Nanette Dembritz, "Beyond Any Discipline's Competence," 83 Yale L.J. 1304–13 (1974); 74 Columbia L. Rev. 996–1015 (1974). These same reviewers have criticized the authors for insisting that the natural parent has no claim independent of the child's interests and hold that this is at odds with "findings of psychoanalysis or psychiatry" and the U.S. Supreme Court's constitutional concern for the biological parent's status. See 83 Yale L.J. at 1304–05.

12 At pp. 5–6.

13 At pp. 119–20.

14 At p. 10.

15 At pp. 21–25.

16 At p. 53.

placement process. The most obvious example of this mechanism involves legislation that takes child development principles into account. Again, however, negative consequences might flow from the misuse of knowledge from another discipline. In one case, a child care agency's decision not to oppose the parents' attempts to get custody of the child was based on acquired knowledge of the law *i.e.,* that magistrates courts would uphold the natural parents' right to have their child back. This went against the agency's own professional judgment and, thus, according to the authors, was acquired knowledge of the law that should not have been acted upon.[17]

The authors next note the ambiguities and conflicts that arise if one professional attempts to perform two different roles. They praise a child therapist who refused to testify as an expert in his patient's custody proceeding. However, a social worker charged with a child's welfare who also counselled the child's parents and a lawyer who attempted to advocate his child client's own custody preference and what he himself thought was in the child's "best interests" both assumed dual roles that were incompatible and detrimental to everyone's interest.[18]

In the last two chapters of the book, the authors return to themes that were originally expressed at its outset. They again draw a distinction between parents and professionals involved in child placement proceedings, this time emphasizing the latter's challenge to be caring without taking unnecessary control of the child's life. A judge who tells a child that he will be available to talk to her about her parental visitation problems takes as much parental licence directly as a judge who tells a Japanese mother to buy her children "proper" beds takes indirectly.[19] According to the authors, professionals must ask themselves at every stage if they are usurping the parental prerogative or making promises that they can't or won't be able to keep.[20] Whether these goals are realistic or can even make an emotionally difficult legal process conduct itself more smoothly are questions that child placement professionals will certainly be addressing in the near future.

NANCY BATTERMAN

[17] At pp. 72–73.
[18] At pp. 81–93.
[19] At pp. 94–108.
[20] At p. 108.