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Schatzman, J. L. (1998). The best interests of the child: the least detrimental alternative. *Boston University Public Interest Law Journal*, 8(1), 215-218.

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BOOK NOTE

THE BEST INTERESTS OF THE CHILD: THE LEAST DETRIMENTAL ALTERNATIVE

BY

JOSEPH GOLDSTEIN, ALBERT J. SOLNIT, SONJA GOLDSTEIN, AND ANNA FREUD

THE FREE PRESS, 1996

I recently had the pleasure of reading *The Best Interests of the Child: The Least Detrimental Alternative*, by Joseph Goldstein, Albert J. Solnit, Sonja Goldstein, and the late Anna Freud. This informative and inspirational book combines three works by the authors - "Beyond the Best Interests of the Child," "Before the Best Interests of the Child," and "In the Best Interests of the Child." This trilogy provides a wealth of information and new ideas for anyone who works with, or on behalf of, children. Whether you are a teacher, an attorney, a judge, a social worker, or any one of a number of related professionals, this book is a must read. The authors focus on critical issues in child placement and forces us to examine painful experiences with which young people involved in the legal process are constantly confronted. Although some of the case studies in the book are painful to read, this work should serve to open a lot of eyes and force us to look at the legal process through the eyes of the child involved. This type of book is therefore essential not only for the experienced professional, but also for the young novices in the field like myself. As a student in the Boston University Criminal Clinical Program, I have handled cases in the Boston Juvenile Court. While reading *The Best Interests of the Child*, I was presented with situations that I had already encountered and forced to consider my actions as well as others in the legal system.

The first part of the book, "Beyond the Best Interests of the Child," focuses on guidelines for placement decisions concerning children who are already involved in a court proceeding. The authors stress that child placement decisions must always protect the child's need for continuity, be made in a timely fashion according to a child's sense of time, and consider the legal system's inherent incapacity to predict the future and control long-term familial relationships. The overriding theme in this section, however, is that the legal system must always keep in mind that it should follow the path that constitutes the "least detrimental alternative" for the child. In considering what constitutes the "least detrimental alternative," the authors make it clear that the best interests of the child are, and should be, the court's paramount consideration. The authors describe at length many situations where the "least detrimental alternative" for the child is a difficult, often unpopular, decision. For example, the authors believe that courts

should not be able to order forced visitation in custody disputes. In their opinion, such court orders weaken the authority of the custodial parent and may confuse the child. Although the authors also recognize that visitation with non-custodial parents is important, they provide strong support for their position that this solution is usually not the "least detrimental alternative" in a highly confusing and troubling situation. This example is just one of many controversial positions that the authors take in the first part of the book, as well as the other sections of the work. While I may not agree with the author's ideas on the "least detrimental alternative" approach as applied to custodial disputes, I credit the work for making me consider an issue that had never really presented itself to me before. As in other sections of the work, the authors do something extraordinary for people like me who have worked with children in the legal system — they made me stop and think, something that we all too often forget to do.

The second section of the book, "Before the Best Interests of the Child," was equally thought-provoking and presented some controversial ideas. This section focuses on the reasons that courts and other actors in the legal system should be permitted to intervene in a parent-child relationship. The authors seek to limit state intrusion in families and to preserve the parent's autonomy and authority if at all possible. Again, the authors argue that the state should not interfere and try to modify a parent-child relationship unless the state's intervention is the "least detrimental alternative." For example, the authors consider state intervention to be appropriate in situations where the parents request court intervention or where a child has suffered, or has been threatened with, serious bodily injury at the hands of their parents. State intervention is also seen as appropriate where parents refuse to render lifesaving medical treatment. These examples seem reasonable and not all too controversial. It seems safe to say that most people involved in the child placement process, as well as members of the general public, would not quarrel with state intervention in these types of harmful situations.

Some of the authors' arguments in this section of the book, however, are quite controversial and unsettling to me personally. The authors state that emotional abuse or neglect should not be a separate ground for state intervention. Arguably, the authors are correct when they state that this type of abuse is extremely hard to prove and even harder to distinguish from emotions that many children experience as a part of their development into adulthood. What I find troubling is the fact that the authors seem unwilling to concede that there are situations where emotional abuse or neglect can be so apparent that it should serve as a ground for state intervention including, in some cases, removal of a child from the home. I think that we all can probably think of children whom we know or have heard about who are verbally abused by their parents on a day-to-day basis. Although I am far from an expert on this subject, I think it is safe to say that this type of abuse can be just as harmful as physical blows and can often create permanent scars. Acknowledging that the authors' argument against state intervention in cases of emotional abuse is legitimate in most situations, I believe that emotional abuse alone can and should be enough to justify court intervention.

In a somewhat more troubling example, the authors state that suspected sexual abuse also should not be a ground for state intervention in the parent-child relationship. The authors state that the ground of serious bodily injury "covers the child who suffers physical harm at the hands of sexually abusive parents. It does not cover the child who is seduced – whose parents, without causing (or threatening) serious physical injury . . . betray her trust by taking advantage of her sexually." Although the authors do not debate the fact that sexual abuse of children by their parents is harmful to them, they doubt that state intervention can give the children a less detrimental alternative. Since it may be extremely difficult to distinguish between appropriate and inappropriate sexual behavior by the parents, the authors argue that the harm done by intruding on the family and parental authority may prove to be greater than the harm done by leaving the family unit intact.

Personally, I found it incredible that knowledgeable, experienced people like the authors would argue that suspected sexual abuse that does not cause physical injury should not be a ground for state intervention. The authors' argument appears to be based on the premise that there must be some physical or visible evidence of serious bodily injury to the child in order to justify intervention by the state. The authors, however, undercut their own argument when they contend that the state should not intervene because there is no guarantee that anyone can provide the child with a less detrimental alternative. The problem with this contention is that there is *never* a guarantee that the state can provide a less detrimental alternative when they remove a child from the home or somehow modify the parent-child relationship. We have all heard horror stories of overbearing state authorities and the foster care system. When a child is clearly being abused, however, the state is justified in intervening. No one can guarantee that a child removed from sexually abusive parents either permanently or temporarily will be placed in an ideal situation. Even without this guarantee, and acknowledging that altering the parent-child relationship is painful for any child, there are some risks that we have to take, and sexual abuse warrants this risk-taking.

Keeping in mind these controversial arguments, the authors move on to the role of the professionals who work with children in the legal process in the last section, "In the Best Interests of the Child." The authors delve into the conflicting roles in which actors in the system find themselves, or place themselves in, without realizing it. This section does an excellent job of providing case studies to illustrate how easy it is to step out of our role and engage in somewhat inappropriate behavior. When trying to help a child, I think many of us – myself included – are quick to try to be all things for that child. It is easy to forget that we are not the child's parents and are not supposed to try to fill that role. The authors do an excellent job of reminding us how important our various roles are, while making us aware of the dangers of trying to overstep our boundaries.

One may not agree with all of the arguments advanced by the authors or the positions they take on controversial issues. But one cannot argue with the fact that this well-written and well-documented book is informative as well as thought-provoking. It is easy to become comfortable in our beliefs if we are not challenged or presented with conflicting ideas. *The Best Interests of the Child*

serves to challenge us all to stop and think seriously about the thousands of children who are involved in the legal system. It challenges us to consider a different point of view, or, for those who are in agreement with the authors' point of view, examine arguments that we might not have considered. Regardless of one's personal views on the issues presented, reading *The Best Interests of the Child* is definitely in your best interest.

Jennifer L. Schatzman