

# Anna Freud in Law

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ANNA FREUD'S DEATH CAME AS NO SURPRISE. YET IT IS DIFFICULT to believe she is dead. To the end she was young in spirit and mind. Even following the series of hospitalizations that began in the winter of 1982, she continued to be actively and vigorously involved in work on our third book—this time with Sonja Goldstein joining her collaboration with Albert Solnit and myself. In and out of the hospital Anna Freud worked with us regularly. During our 6 months in London in 1982, hardly a weekly work session closed without her breaking a logjam in our thinking by her spelling out precisely what needed to be done.

Anna Freud was a wonderful person—wonderful in so many different ways and settings. I shall talk about the Anna Freud I knew and worked with—about Anna Freud the law teacher—to add to the Anna Freud her analytic colleagues knew. I shall say a little about several aspects of her work in law—about how she responded to Yale's invitation that she be a Lecturer in Law, about her contribution to the life of the Law School, and finally something about how together we wrote about children and the law. And, I also wish to capture, without intruding on the privacy she cherished, something about her sense of humor and playfulness—something about a conscience that demanded hard work but allowed time away from our joint enterprise to enjoy with us good food, good theater, sightseeing, and small talk.

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Late in 1961 Dean Eugene Rostow of the Yale Law School called on Anna Freud at 20 Maresfield Gardens. On behalf of the School he invited her to join the law faculty as a Senior Fellow and Visiting Lecturer. She accepted, but first warned the Dean: "I hope you and your faculty realize that my LLB degree from Clark University in 1950 [the only University degree she had at the time] is only an honorary one."

Later, in the spring of 1962, I met Anna Freud at Marianne Kris's apartment in New York. I had come with Jay Katz, a psychoanalyst, also of the Law faculty, to talk with her about our work and why we wanted her to join us. On being introduced, I immediately asked, somewhat abruptly I fear: "Why did you accept our invitation?" "Because my father as a young man wished, for a time, to study law. He had always hoped to establish a rapprochement between psychoanalysis and law," she replied. Thus she set the goal for what became a joint enterprise in which, 20 years later, she was still actively engaged at the time of her death.

After that initial meeting Anna Freud asked for details about the way we taught at Yale Law School. With Katz I wrote (May 18, 1962):

Our class meetings are very informal; formal lectures are rare; . . . The teaching, and we hope the learning, is done primarily through discussion of assigned materials. Discussion is usually triggered by a question from the instructor. From that point on there is a constant exchange between teacher and student and teacher and teacher. . . .

We . . . prepare for such class sessions by reading and studying independently the materials assigned . . . and then meet together before class [usually for 2 or 3 hours to explore] those questions which seem most important to us. [W]e carry on a . . . discussion in search of an opening question and of the . . . issues that we would like discussed in class.

Anna Freud loved this way of working. The students never got enough, no class ever ended on time. They insisted on posing new questions and hearing what she had to say. She not only willingly stayed on—caught in the excitement of the exchange—she never tired of responding to their challenges. Indeed, year after year she insisted on a schedule which had us teaching more

than twice our normal load. During her month-long visits she participated in and prepared for the equivalent of 2 months of class meetings in Family Law; 2 months of seminar sessions in Psychoanalysis and Jurisprudence; and, in addition, offered 4 2-hour seminars for students in my Criminal Law course. She read the assignments, attended class 3 times a week, and then met with my students to comment on the issues covered or that I should have covered. Criminal Law had a special attraction for Anna Freud. She was disappointed not to have pursued further her interests in that field. But whatever the subject matter, all of the meetings at the Law School were events of high excitement and hard and exhausting work for the students and for Jay Katz and myself. We always looked forward to her visits, and we were delighted when she left—her pace was more than we could manage for long.

Anna Freud loved working at the Law School and stimulated a collaborative tie between the Law School and the Child Study Center at Yale which continues to this day. Accepting a joint invitation from the two Yale departments to be a Visiting Lecturer in the spring of 1968, she wrote to me:

The plan of drafting a model code of procedure for the disposition of children is an exciting one. There is no doubt in my mind that I should like to participate as I have done before. . . . The work seems too interesting to miss.

[But in a letter to Al Solnit and Dean Pollak on the same day, she warned as she frequently did from that time on:] You will not be surprised on the other hand that at my age there are also some preconditions which will have to be fulfilled to make the plan feasible. I shall have to be alive in 1968, in good health and in possession of my faculties. The first two are always easier to ascertain than the third.

That same year when asked to address the graduating class of the Law School following her receipt of an honorary degree from Yale University, she wrote to Dean Pollak (May 23, 1968): “I feel proud to be considered a member of the Law Faculty.” At the commencement she declared:

I share with you, the students who graduate from the Yale Law School today, a feeling of deep gratitude for the University

which has given us a great deal: to you the opportunity to learn and equip yourselves for a future career; to me the opportunity to enter into a new field of work, to teach, and, incidentally, to acquire a further degree, in a world in which degree and consequent status count for much. Relying on this common experience, I use this last opportunity before your departure to look back on our time together, hoping that you will carry some residue of it with you into your professional lives [1968b, p. 256].

And we did. As lawyers, legislators, law teachers, and judges, we continue to draw on what she taught.

Anna Freud (1972) taught us to put childish things before, not behind, us. She taught us to place ourselves in a child's skin to try to think a child's thoughts and feel a child's feelings about being "removed from a known environment to an unknown one" about his residence being divided evenly between two warring parents or about having to visit an absent parent on "prescribed days and hours" (p. 624f.). She helped us understand that a child, like an adult, is "a person in his own right"; but that unlike adults, children "*change* constantly: from one state of growth to another" measuring the passage of time not by clock and calendar but by their own built-in time sense, based on the urgency of their instinctual and emotional needs" (p. 624). She helped us see that the question was not which parent deserved the child in a custody dispute but whom does the child need the most if harm to his development is to be minimized. The parent should be awarded to the child—not the other way around. Anna Freud taught us that a child should not be left in storage like chattel or moved from foster place to foster place while an abusive parent was rehabilitated. She helped us understand that when the law intrudes on behalf of a child, it must safeguard his "need for (a) affection, (b) stimulation, (c) unbroken continuity of care" (1966, p. 78). But she also warned us not to attribute too much to our interventions. "The result," she said (1967), "is always determined only in part by the handling of the child; for the other part it is determined by what the child brings with him to the situation" (p. 239). "Unlike the . . . courts," she added (1968a), in a child's development, "we are in the lucky position not to

have to pronounce judgment. We merely formulate advice” (p. 252).

I cannot leave this subject without noting how great was Anna Freud’s pleasure when, at what unfortunately proved to be our last work session together, I read to her from the *London Times* of July 14, 1982 the judgment of Lord Justice Ormrod in the case of *D. v. D.* He declared that the judges of the lower court were wrong to order a toddler transferred from his mother to his long absent father. They, Justice Ormrod said, had placed “much too little weight” on the fact that “it was generally accepted that, particularly in the early years, continuity of care was a most important part of a child’s sense of security and this disruption of established bonds was to be avoided whenever possible.” Anna Freud was especially pleased because often she warned that we “must not be disappointed if England is less enthusiastic [about our work] than America, since you probably know that is always the case” (December 20, 1973). And she wrote to me (September 8, 1980), enclosing a review of our second book in *New Society*: “It is nice if England takes notice sometimes.”

Work on the idea of drafting a child placement code at Yale in 1968 led to the writing of our books, first, *Beyond the Best Interests of the Child* and then later *Before the Best Interests of the Child*. Our collaborative experience in preparing for class and seminar shaped the way in which I worked with Anna Freud and Albert Solnit in writing both books. We discovered that a book of chapters separately authored would not do the job. We had to learn to speak in one voice. Our more than a dozen almost week-long meetings between 1969 and 1973 working on the first book began each day with a 2- to 3-hour session in the morning, a 2-hour session in the afternoon, followed by tea and an evening session of 1½ or 2 hours. By the time we reviewed our final draft before sending it to the publisher we had discussed every line and nearly every word of the entire manuscript. We had found a common tongue.

Our work sessions were exciting. Anna Freud’s involvement was, as ours, intense. As Dorothy Burlingham, who always joined us, described in her Preface to the *Beyond* book (1973), those meetings were punctuated with

. . . moments when individual opinions clashed and lively battles ensued during which each contributor obstinately clung to and defended a conviction of his own. . . . But even disagreements which at first appeared insoluble were resolved after much discussion and argumentation . . . the high excitement revealed the enormous investment in their joint venture and mutual collaboration. At moments of tension the atmosphere was also relieved by humor, for example, when . . . [Anna Freud] remembered nostalgically how easy and comfortable it had been to write books all on her own [p. x].

On the evening we agreed that the manuscript for *Beyond* was ready for the publisher, Anna Freud left the table where we had been working. For a moment she appeared elated, then exhausted and went to lie on the couch in her father's study. While she was resting, Al and I talked about what our next book should be about—something we had never thought of, or at least spoken of, until then. When Anna Freud returned to the worktable—a little apologetic for conking out on us—we turned to her and proposed doing another book together, the one that became *Before the Best Interests of the Child*. Hardly had we finished talking, she broke into song from *My Fair Lady*, “I could have danced all night.”

As intensely serious as she made our work relationship, Anna Freud always invested it with a sense of playfulness; she insisted that we not take ourselves too seriously, as in my favorite anecdote from Ireland where we worked on two occasions. Anna Freud had given permission to a neighbor to graze his cows in front of her cottage. When we arrived for work one morning, we found two boards across the entrance with a sign on which she had printed in bold capital letters:

BLOCKED  
FOR  
COWS ONLY  
FREE  
ADMITTANCE  
FOR  
PROFESSORS

Ireland indeed carries with it many pleasant memories. With Dorothy Burlingham, Anna Freud assumed responsibility for

our seeing the sights around Baltimore and introducing us to pubs where the poached salmon and the folk music were first rate. On one of our visits, the summer of 1975, my daughter Anne joined us. Anna Freud invited her to sit in on our work sessions. When I wrote to thank her, she wrote back (October 2, 1975):

I am also so glad to know that your daughter liked her visit with us. I was afraid at certain times that we might be boring her.

By the way, you may tell her that I started my analytic education in the same way. There are some wooden steps belonging to my father's library and I used to sit on them very quietly and listen to his discussion with visitors. That was very useful.

And that same year, after working in Walberswick on an early draft of the *Before* book, Anna Freud, who always felt I needed a haircut, had an amusing story to tell (January 15, 1975):

You will be interested to hear what an impression you made on Walberswick village. Mrs. Webb told us that the village postmistress accosted her in great excitement and very fearfully. According to her account, there were two strangers in the village who evidently spied out the lay of the land to rob the post office. They came in every morning for three days with the pretext of buying a very few stamps and looked around very carefully. Especially one of them looked very suspicious and made her feel afraid. She was on the point of calling the police to get protection, but on the third day, she followed them secretly and saw them turn into our lane. Then she thought with relief: "They might be just visitors for Miss Freud." But, anyway, she unburdened herself to Mrs. Webb who was very amused that a law professor could be taken for a terrorist! So were we.

Anna Freud closed this letter with a concern she felt she had to share as we joined again in a common enterprise: "Do come again soon. When fixing dates, I find, we act as if we here would be there forever."

Almost 4½ years later and after many meetings and much correspondence we were near completion of the *Before* book except for a final chapter when, on October 23, 1978, Anna Freud wrote:

I have to ask you and Al Solnit to consider the date of November

I'm still a tentative one, either to be confirmed or to be scrapped when we come nearer to it. The facts are that I have been ill lately with a rather severe anaemia which incapacitates me to a certain degree. . . . This may all be over in another fortnight, but also it may not. I am sorry but I always warned you that the book and I have a sort of competition: Who will finish first?

[And she added:] This does not mean that I cannot think and perhaps write about the subjects you want me to treat.

Though she phoned to cancel the meeting—think and write she did. In early November I received this note:

You don't know how much I hated to cancel next week's meeting, but I really could not see how I could act otherwise. . . . But still I have a very bad conscience.

As a slight compensation, I have begun to do the following: I am going through all the chapters which I have now revised, as well as not revised, and I am noting down thoughts and remarks concerning certain passages . . . you can then regard or disregard them, throw them out or include them partially. I leave it to you, but it might be at least a written exchange.

A week later the thoughts began to arrive. She wrote:

This brings me to a worry about our new book which I have had all the time, and which I can never express convincingly enough for you and Al Solnit. In your endeavour to protect the family from unwarranted intrusion, you and the book have built up a picture of family life and its benefits which many people will feel to be quite unrealistic nowadays, and this criticism may well interfere with an appreciation of the book.

It is true that we make two important points:

1. That only the intact family can really fulfil all the child's developmental needs. But in extension of this, do we also make it clear enough that we realize how many families fail in this respect? And that every year, fewer and fewer come up to the ideal pattern which we describe?
2. I do not ignore the fact that we say in one paragraph that the very complexity of parental duties causes failure in many cases, but it seems to me that this paragraph is too short in comparison with all the paragraphs in praise of the family.

In short, I don't know what the right balance is that we should strike, but my feeling is that we have not achieved it yet.



Anna Freud kept us busy until the end of the year when concerning a last chapter she wrote (December 28, 1978):

I worked hard over the enclosed, but I still am not certain whether it is what you wanted. Do let me know.

In any case, I do not think that I can do any better.

We are still here, with Dorothy in bed and only very slightly better. I am all right and my blood remains steady. (In case you do not like the Chapter, we can always blame it on the blood.)

Anna Freud's enclosure did the job. It provoked a lively debate which led, after meeting again in London, to our writing a final chapter entitled "Too Early, Too Late, Too Much, or Too Little." It starts out:

In writing and rewriting this book we have been constantly aware of a pressure within us to use the legal system to meet every situation in which a child needs help. We had to remind ourselves that neither law, nor medicine, nor science has magical powers and that there is no societal consensus about what is "best" or even "good" for all children. More than that, we had to address the tension between the fear of encouraging the state to violate a family's integrity before intervention is justified and the fear of inhibiting the state until it may be too late to protect the child whose well-being is threatened.

We respect parental rights based on the fact of reproduction. We see the biological connection as a powerful motivating force for most parents to provide their children with continuous affection and responsible care. But we recognize that a child's attachments and healthy development do not rest on biology alone. They ultimately depend on the adult caretaker's reciprocal affection in day-to-day care and attention of the child's needs. Moreover, society's belief in the blood tie exists side by side with a growing apprehension about the general deterioration and dissolution of family life and of the plight of many children whose parents fail to discharge their responsibilities. Thus, moves *against* and *for* state-sponsored intrusion upon parent autonomy vie with each other in a world where parental authority is frequently abusive, harmful, and detrimental to the child; where the child's essential tie to his parents ceases to be beneficial in families torn internally by parental violence or indifference; where state interference, under the cloak of the child's best interests, is sometimes no more than the wielding of

power by authoritarian figures who try to impose their own standards on differently minded parents; and where well-intentioned rescue attempts may serve merely to destroy remaining family attachments while failing to provide children with the necessary substitutes [p. 133f.].

I wrote Anna Freud about the difficulties we were having arranging for a paperback publication of *Before* in England. She wrote back (July 18, 1979): "This book must feel quite offended about not being liked."

By then, 1979, we began outlining what must now be our last book together. Just before leaving to work with Anna Freud in London during the first 6 months of 1982, Al Solnit, Sonja, and I sent her a small calculator for her birthday. She loved gadgets and wrote back (December 7, 1981):

Many thanks for the birthday wishes and the present. I am trying to calculate how many days I have lived already. I found out that you made a mistake. It isn't my 85th birthday, but my 86th. What would one do without a calculator?

[And just before leaving the United States I received this word (written on December 16, 1981):] I just noticed that I have not a single copy of "*Beyond . . .*" left. Please could I have four or five? I have plenty of "*Before . . .*," but how can I manage without the original "good book"?

Early in February we had some wonderful work sessions. They were enough to entitle all of us to go with Alice Colonna on different occasions to the exhibition of Lucy Rie pottery at the Victoria and Albert Museum, a pizza dinner at a pub followed by an Irish coffee, and finally a movie, *Mephisto*, which Anna Freud found absorbing and disturbing. During it, with a little help from me, she managed to finish a large Yorkie chocolate bar. Then back at work and the expected unexpectedly happened.

When we came to say good-bye in July as we left for Ireland, Anna Freud said: "Too bad I was ill while you were here. We could have done so much more together. I'd love to be going with you."

#### BIBLIOGRAPHY

FREUD, A. (1966). Psychoanalysis and family law. *W.*, 5:76-78.

- \_\_\_\_\_ (1967). Residential vs. foster care. *W.*, 7:223–239.
- \_\_\_\_\_ (1968a). *Painter v. Bannister*. *W.*, 7:247–255.
- \_\_\_\_\_ (1968b). Address to the commencement services of the Yale Law School. *W.*, 7:256–260.
- \_\_\_\_\_ (1972). The child as a person in his own right. *Psychoanal. Study Child*, 27:621–625.
- GOLDSTEIN, J., FREUD, A., & SOLNIT, A. J. (1973). *Beyond the Best Interests of the Child*. New York: Free Press.
- \_\_\_\_\_ (1979). *Before the Best Interests of the Child*. New York: Free Press.
- \_\_\_\_\_ & GOLDSTEIN, S. *In the Best Interests of the Child*. New York: Free Press (in preparation).
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