

NATIONAL COALITION FOR
CHILD PROTECTION REFORM

53 Skyhill Road (Suite 202) / Alexandria, Virginia, 22314
Phone and Fax: (703) 212-2006 / e-mail: info@nccpr.org / www.nccpr.org

The children wronged by “Children’s Rights” *and by “A Better Childhood,” too.

The 800 pound gorilla of child welfare litigation
sometimes does more harm than good.

*By Richard Wexler, NCCPR Executive Director
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OVERVIEW

The finest work of journalism ever written about child welfare is *The Lost Children of Wilder: The Epic Struggle to Change Foster Care* (Pantheon: 2001), by Nina Bernstein, who formerly covered these issues for *The New York Times*.

A finalist for the National Book Award, *Lost Children* tells the story of American child welfare through one class-action lawsuit brought against New York City’s foster care-industrial complex in the early 1970s, by a young lawyer for the New York Civil Liberties Union named Marcia Lowry.

In one of the book’s most compelling passages, Bernstein describes what Lowry and her team of low-paid public interest lawyers faced when they met their opponents at “the august Wall Street firm that had taken the lead in the agencies’ defense ...

Their conference rooms had the ambiance of a very exclusive men’s club: cigars were smoked, and servants padded about discreetly replenishing drinks and replacing ashtrays. Occasionally, the pin-striped formality might be punctuated by a manly guffaw or the flash of cuff links as one attorney clapped another on the back over some shared joke. ...The ... gatherings were like convocations. Just walking into the room meant drawing the collective gaze of a dozen men who seemed to think you should be wearing an apron.

In the early days, being treated as an interloper there had been part of the thrill of the case for Lowry, a kind of confirmation that she was doing battle for the weak.¹

That was then.

Today, Marcia Lowry and her colleagues still are doing what they think is best for vulnerable children. Like so many people who get child welfare wrong, Lowry and her present and former colleagues are well motivated. And often, though not always, their lawsuits still are better than no lawsuit. The issue is the results those lawsuits are getting. And the mediocre results are rooted in what has changed over the past 40 years.

Lowry long ago left the Civil Liberties Union, and concerns about civil liberties, behind. Now she derides the ACLU’s [“liberal agenda.”](#) For years, she ran her own multi-million dollar operation, and hobnobbed with celebrities at glitzy fundraisers. Corporate raider Carl Icahn [once chaired her Board of Directors](#)² and [continues to donate](#) to the group. The [current board](#) is a who’s who of corporate America.

By “children’s rights” be assured that the group using that name does not mean the right of children to be free from unreasonable search and seizure. It does not mean the right to be with the parents who love and cherish them but may be too poor to keep them out of the hands of a child welfare agency. And it certainly doesn’t mean the right to be free from the racial and class bias that has permeated child welfare for more than 150 years.

Then she split from the group she founded, the group that so arrogantly calls itself “Children’s Rights,” and formed a new group with apparently identical goals and methods. She calls it “A Better Childhood.” When Marcia and CR divorced, each got custody of some of the lawsuits. So unless otherwise noted, though this report uses the name Children’s Rights, our evaluation applies to both groups.

As for big, powerful law firms, they’re now Marcia Lowry’s best friends, gladly donating their services. In Rhode Island, CR’s local partners include [Weil, Gotshal & Manges](#), a 1,200-lawyer international firm whose Providence office specializes in “Buyouts & Venture Capital Investment” according to the firm’s website.³ In Michigan, Lowry partnered with [Kienbaum, Opperwall, Hardy and Pelton, P.L.C.](#) a firm which lists, among its specialties “union avoidance...”⁴

Yet somehow, Lowry remains beloved by the media and by some liberal donors. Her successors at CR keep right on getting funds from those donors, and then using the money to win settlements that harm poor people.

The arrogance of the organization is summed up in its name. Formerly “Children’s Rights, Inc.,” it’s now simply “Children’s Rights” But by “children’s rights” be assured that the group using that name does not mean the right of children to be free from unreasonable search and seizure. It does not mean the right to be with the parents who love and cherish them but may be too poor to keep them out of the hands of a child welfare agency. And it certainly doesn’t mean the right to be free from the racial and class bias that has permeated child welfare for more than 150 years.

While some progressives may love Marcia Lowry, she does not love them back.

On the contrary, as noted above, that’s that pesky “liberal agenda” for which, Lowry says, she has no time. So while some progressives may love Marcia Lowry, she does not love them back.

Marcia Lowry’s approach to litigation and child welfare policy suffers from a series of failings:

- A refusal to include any remedy that involves [preventing the needless removal](#) of children from their homes, often when family poverty is confused with “neglect.”
- Undermining state and local efforts to curb needless removal of children.
- Allowing already scarce funds for prevention and family preservation – and funds to support poor families in general – to be diverted into hiring binges for caseworkers to investigate more families and take away more children (sometimes because of those very budget cuts).
- A hostility to kinship care – placing children with relatives instead of strangers.
- Demands to raise the pay of foster parents, who already are paid far more to care for poor people’s children than birth parents ever get to care for their own -- and a willingness to make selective, misleading use of data to support that campaign.

Not all of these problems are apparent in all of Lowry’s lawsuits – but they turn up often enough to demonstrate a disturbing pattern.

The extent to which Marcia Lowry’s suits sometimes do harm is aptly illustrated by her most recent suit, at least her third, against the child welfare system in New York City. That system has made significant progress in recent years, and Lowry’s suit can only derail that

progress.

But that’s not just our conclusion. It’s the conclusion of the Juvenile Rights Project of the New York City Legal Aid Society and a group called Lawyers for Children. They don’t represent parents. They represent the *children* in child welfare cases. Their perspective, based on what they see every day representing thousands of children, [is that Lowry’s lawsuit is harmful](#). (Groups representing parents also oppose the suit. So perhaps Lowry should be congratulated -- she finally got the city child welfare agency, the lawyers representing children and the lawyers representing parents to agree.)

As Marcia Lowry became more and more comfortable with the One Percent, she became less and less interested in stopping children from being taken from their parents in the first place.

The only thing the New York City suit seems to have accomplished is to help Gov. Andrew Cuomo in his efforts to [undermine the city’s progressive mayor](#), Bill de Blasio. Cuomo rushed to settle the suit, which was against both the state and the city. And in a telling example of the arrogance that is a hallmark of Lowry’s efforts, she is attempting to ban any other organization from bringing a class-action suit on behalf of foster children while her settlement is in effect.

Marcia’s former organization, CR and her current organization, A Better Childhood together are the 800-pound gorilla of child welfare litigation, filing similar “McLawsuits” across the country. They usually lead to settlements that are inadequate, with a penchant for minutiae.

The group’s first settlement in Connecticut, for example, included 160 pages of instructions, including requirements for one training manual after another. One of those manuals allegedly included things like a requirement that the classrooms where training takes place contain wastebaskets.⁵

Other groups get better results

In contrast, consider the approach taken in two lawsuits brought by other organizations, lawsuits that led to far better results.

Before the Bazelon Center for Mental Health Law sued Alabama, they studied CR’s work, concluded it had produced [“only modest success”](#) and decided to take a very different approach, one that involved demanding that the system be rebuilt to emphasize safe, proven approaches to keeping families together. (A member of NCCPR’s volunteer Board of Directors was co-counsel for plaintiffs in this lawsuit.)⁶

The result was America’s [most successful child welfare reform](#) effort.

In Illinois, the state branch of the ACLU reached a settlement that was similar to the kind negotiated by CR. But when it wasn’t working, plaintiffs there moved away from a CR-style approach and began adapting Alabama solutions. Illinois, too, has achieved significant success. While major problems remain, the number of children in foster care has declined significantly and independent monitors found that child safety improved.

In contrast, most of the places Marcia Lowry has sued remain mired in mediocrity.

Worst of all, as Marcia Lowry became more and more comfortable with the One Percent, she became less and less interested in stopping children from being taken from their parents in the first place.

The civil liberties lawyer who [once brought a child to Congress](#) to testify about being needlessly torn from his mother⁷ has been replaced by the friend of the rich and powerful whose website has included the [flat-out false claim](#) that “only the most severe cases of abuse and neglect result in children being removed from their homes and placed in foster care.”⁸ (CR has never explained the obvious contradiction in these two positions.)

[Also false](#): The claim in a CR fundraising appeal that "right now, there are nearly 500,000 abused and neglected children in foster care." The problem isn't that the figure is a bit out of date. The lie is the claim that all of the children were abused and neglected. In fact, children can languish in foster care for months before a judge ever decides if the allegation had any merit. But lumping them all together reinforces stereotypes about birth parents – and, apparently helps bring in donations.

Nevertheless, with two exceptions, the New York City suit noted above and the suit in Michigan, we’ve never opposed Marcia Lowry bringing a lawsuit in a particular state. We’ve even defended CR against the two most common criticisms leveled against the group, that it is only in it for the legal fees and the money spent on litigation would be better spent on services.

In fact, Marcia Lowry and her current and former colleagues could have made far more money in big corporate law firms. As noted earlier, like so many people who get child welfare wrong, Lowry is well motivated. And CR’s response on the cost of litigation is correct: Stop running lousy systems and you won’t get sued.

Most important, until Michigan, CR always had sued agencies so dreadful and so uninterested in reforming on their own, that even a CR suit probably would bring about at least marginal improvement. And, until Michigan, while CR’s proposed remedies could be astoundingly hypertechnical and tended to emphasize process over outcomes, CR rarely had sought remedies that actually did harm.

Their skill in simply calling attention to problems could help a little. Some of the systems with which they settled improved around the edges. Occasionally they did better than that.

Those were the times CR got lucky. Some other organization, like the Annie E. Casey

Foundation, would step in and craft better solutions than CR itself would ever think of. That happened in New York City (in response to one of the earlier CR suits) [and New Jersey](#). Or the court would name a particularly astute “monitor” to oversee a settlement; that made the results in Michigan less bad than they otherwise would be.

And CR used to do good work concerning the enormous harm of congregate care. A CR settlement made it illegal to institutionalize young children in New Jersey; and, until the first director of their policy arm left the organization, they were issuing good reports on the harm of “shelters,” the problems with group homes in New York City, and the harm of the “back to the orphanage” movement.

But suits in Michigan and Rhode Island, both of which have huge problems with the misuse and overuse of group homes and institutions, neglected that issue.

A turn for the worse

[In Michigan](#), CR crossed some crucial lines.

- In Michigan, for the first time, CR sued a state that was, at the time, beginning to improve on its own – and both the suit and the settlement set back those improvements.

The settlement requires Michigan to cut caseloads. But instead of requiring Michigan to do that by controlling needless removal of children and bolstering programs to keep children out of foster care, the settlement allowed Michigan to slash its already meager funding of prevention and family preservation in order to fund a child abuse investigator/foster care worker hiring binge. [And that’s exactly that the state did](#).

The state also cut basic assistance to poor families – [and said it wasn’t a problem](#) because they also were hiring more child abuse investigators (thanks to the settlement).

Lowry likes to say that she doesn’t know how to fix poverty but she knows how to fix foster care. The evidence is she can’t fix either one. But could she at least refrain from making the poverty worse?

- The settlement says nothing about the [racial bias that permeates Michigan child welfare](#), as documented by the Center for the Study of Social Policy.

- The settlement also has led to the expulsion of hundreds, perhaps thousands of children from the homes of grandparents and other relatives (discussed in detail below) because those relatives were unable to meet pages of hypertechnical licensing requirements, many of them unrelated to health and safety.

- The lawsuit attempted to win foster parents a giant pay raise – another obsession of CR’s, and something they’ve also sought in other states. This would only further divert funds from alternatives to taking away children in the first place. (Again, see details below.)

- And the settlement does almost nothing to control Michigan’s overreliance on institutionalization.

Whether intended or not, CR’s Michigan lawsuit read like a thinly-disguised attempt to transfer resources away from birth families and into the pockets of private agencies and middle-class strangers serving as foster families to poor people’s children.⁹

Indeed, we don’t know who it was who suggested that CR sue Michigan in the first place. According to one news account, Lowry “said that her group was invited to investigate Michigan by local foster professionals and others sick of waiting for change.”¹⁰

In recent years, CR has gone from simply ignoring the problem of needless removal of children to outright hostility to efforts to keep families together.

But when NCCPR contacted CR to ask who those “foster professionals” were, CR refused to say.¹¹ So, was CR “doing battle for the weak” in Michigan? We don’t know.

Hostility to families in state after state

Michigan was just the beginning. In recent years, CR has gone from simply ignoring the problem of needless removal of children to outright hostility to efforts to keep families together.

- In **Tennessee**, CR successfully [strong-armed the legislature](#) into repealing a law that took a tiny step toward balancing the profound incentives judges face to take children needlessly with a small incentive to think of better options.¹² CR’s tactics included a lawsuit that [raises serious questions](#) about how they chose the children who served as “named plaintiffs.”

- In **Georgia**, CR sought to [undermine alternatives](#) to full-scale child abuse investigations that have reduced entries into foster care and demonstrably improved child safety. Indeed, the monitor for CR’s own settlement in Georgia declined to help CR in this effort.¹³

- Also in **Georgia**, *Mother Jones* reports, the state [did what Michigan did](#): “cut spending on child care and put the money into child protective services in the wake of a lawsuit against the state over the mistreatment of children in foster care.”

In other words, money that could have gone to day care to help poor people avoid “lack of supervision” charges was diverted to bolstering investigations of parents on charges like “lack of supervision.”

- In **Massachusetts**, it appears that [several of the “named plaintiffs”](#) in CR’s McLawsuit were children who could have remained safely in their own homes had the right kinds of help been provided. But the lawsuit said nothing about providing that help.

- In **Oklahoma**, at a time when the state was taking away children at a rate vastly above the national average, CR blasted the state’s [first successful efforts](#) to reduce entries into care.

- In **Texas**, a court decision upholding Marcia Lowry’s suit exposed horrific conditions in foster care – including abuse of foster children on a massive scale. Yet the [remedies again include nothing](#) about keeping children out of this state-sanctioned hellscape in the first place. (And if you think the phrase “state-sanctioned hellscape” is too strong, please [read the decision](#) and see what you think then.)

Permanence should mean more than adoption

CR also has a longstanding tendency to view the noble goal of “permanence” for children almost exclusively in terms of adoption. Its settlements sometimes include quotas for adoptions, with no comparable incentives for keeping families together. And CR pushes these quotas even though Marcia Lowry herself has suggested they are dangerous. [telling a Congressional committee](#):

Congress should realize that far too many states ... when they do, for example, raise their adoption numbers, are doing so by including many clearly inadequate families ... along with the genuinely committed, loving families who want to make a home for these children, just to ‘succeed’ by boosting their numbers.”¹⁴

Such contradictions are not unusual. CR often opposes even the most minimal efforts to curb needless removal of children even though Lowry [acknowledges the enormous risk](#) of abuse in foster care. According to Lowry:

I’ve been doing this work for a long time and represented thousands and thousands of foster children, both in class-action lawsuits and individually, and I have almost never seen a child, boy or girl, who has been in foster care for any length of time who has not been sexually abused in some way, whether it is child-on-child or not.¹⁵

WAR AGAINST GRANDPARENTS

President Obama speaks often of how important his grandmother was in his life. The President was raised for eight years by Madelyn Payne Dunham who, sadly, died just before the 2008 election. Today, we would call it “informal kinship care” or “private kinship care.”¹⁶

Children who have the potential to become the next Barack Obama, but happen to live in Rhode Island or Michigan, among other states, may not be so fortunate. That’s because the 10th floor apartment in Hawaii where the President was raised probably would not have qualified under the page after page of hypertechnical requirements any foster parent, including a relative, must meet before becoming licensed or certified in those states – and probably many others.

And if CR gets its way, things may only get worse.

Kinship care vs. stranger care

When children really can’t remain safely in their own homes, the next best option almost always is placement with a grandparent or another relative.

Study after study has shown the enormous benefits of what is commonly called kinship care.

The 10th floor apartment in Hawaii where President Obama was raised by his grandmother probably would not have qualified under the page after page of hypertechnical requirements any foster parent, including a relative, must meet before becoming licensed or certified in Michigan or Rhode Island – and probably many other states.

Kinship care is still foster care, and even grandma is no substitute for leaving children in their own homes. But when that truly is not safe, then at least if a child is placed with grandma, it cushions the blow. The child is with someone he knows and loves. And odds are the placement is in his own neighborhood, so he doesn’t have to change schools and lose all his friends.

Kinship care also lessens one of the most damaging problems of foster care, moving children from foster home to foster home. People who love you are far less likely to give up on you than total strangers. So [grandparents and other relatives](#) are more likely to put up with behavior that might prompt strangers to either reach for the psychiatric medication or throw the child out.¹⁷

That helps explain what Florida found while the child welfare agency there was trying to crack down on the misuse and overuse of sometimes dangerous psychiatric medication. The state Department of Children and Families found that while 26 percent of institutionalized foster children and 21 percent of foster children placed with strangers are on such medication, only four percent of foster children are medicated when they are placed with relatives.¹⁸

[A study](#) by the Children’s Hospital of Philadelphia found that children placed in foster care with relatives had fewer behavior problems than children placed in stranger care.¹⁹

Most important, several studies have found that kinship care is *safer* than stranger care.²⁰

Another study has advanced our knowledge still further. [This latest study](#) found that children in kinship care did far better than children in stranger care on multiple measures of safety, permanence and well-being. *And it found no difference in these beneficial outcomes between licensed and unlicensed kinship homes.*²¹

Again, because grandparents bring an extra ingredient to the mix – love – it should surprise no one that kinship care generally is safer than stranger care. But the hostility toward families that permeates child welfare systems, and the stereotypes that poison public perceptions, both extend to extended families.

It’s all summed up in one pernicious little smear: “The apple doesn’t fall far from the tree.” If mom is abusive, it is claimed, it must be because grandma has failed in some way.

Because grandparents bring an extra ingredient to the mix – love – it should surprise no one that kinship care generally is safer than stranger care.

For starters, this assumes that if mom is doing a poor job raising the children it has to be grandma’s fault. In fact, there are any number of times when a grandparent may raise four children under circumstances of poverty and need that many of us can’t possibly imagine, and have three of them become happy, healthy productive adults. The fourth is lost to the lure of the streets. When that grandmother then comes forward, at a time when finally she should be able to rest, and offers to take care of that child’s children, she should be treated as a hero, not a suspect.

And, as one of the nation’s leading experts on kinship care has said: “a tree has more than one branch.”²²

Unfortunately, CR’s lawsuits sometimes undercut kinship care. That’s because of one of CR’s obsessions: Licensing.

Before a stranger can become a foster parent, all states require an elaborate licensing process. Some of the requirements are essential, like a basic criminal records check and a check to be sure the home is not a firetrap. But many other licensing requirements are geared more to middle-class creature comforts than to basic health and safety. They involve things like minimum square footage and number of children who can sleep in the same room.

Because most children taken from their parents are poor, odds are their grandparents and other relatives are poor. So they may be unable to meet all of these and similar requirements.

[In Rhode Island](#), for example, licensed foster parents are required to “provide the child with a minimum of three (3) well-balanced meals, or the equivalent, each day at regular times...”²³ How many single grandparents, still working, in part because they need to raise their grandchildren, can pull that off every day?

All of these things are sensible goals and good child rearing practices. They make sense in a vacuum – but not when denying a license to a grandmother who can’t meet all of them means consigning her grandchild to the care of strangers or worse, institutionalization.

Given all the benefits that being with a grandparent or other relative can provide for a child, if grandparents are not a danger to their grandchildren and live in a home that meets minimum standards, that should be enough. (And when the home doesn’t meet those physical standards, the child welfare agency should help them fix the home or move).

But CR pushed Michigan in the opposite direction – and it appears to want to do the same in Rhode Island and elsewhere.

Many licensing requirements are geared more to middle-class creature comforts than to basic health and safety.

In Michigan, CR’s settlement demands that all foster parents, kin and stranger, be formally licensed. The result: Hundreds, perhaps thousands of children have been [thrown out of the homes of relatives](#) who either couldn’t meet every one of the requirements or simply were too suspicious of the Michigan child welfare agency to go through licensing.²⁴

And yet, CR’s biggest concern about this is not the fate of those children – it’s the fact that, as far as they’re concerned, too many kinship caregivers are getting waivers from the licensing requirements.

In fact, CR’s own primary justification for its war against grandparents isn’t safety, it’s money. Under federal regulations, unless a foster home is licensed, the state can’t receive federal reimbursement for the case. And if it *is* licensed, the state must pay the grandparents as much as it does strangers. So CR would argue they’re only trying to help.

That is in keeping with the way CR seems to see children: as numbers on a spreadsheet or files on a shelf.

But see children as flesh-and-blood human beings and other solutions come to mind, such as pressing to change the federal regulations and demanding that states simply reimburse grandparents the same way they reimburse strangers, using state funds to do it, if necessary.

It’s not just Michigan and Rhode Island. In Wisconsin, after a child died in a kinship care placement state officials ignored the fact that kinship care is, in general, the safer option, and imposed all sorts of new licensing restrictions.

Now, Wisconsin doesn’t just have licenses for grandparents, it has five separate levels of licensing. And don’t even think of taking in a level 3 child if you’ve only got a level 2 license! There’s also a process for granting “exceptions” that is so complex it requires creation of an “exceptions panel” to rule on requests. It also requires that any grandparent who wins an exception from a regulation create her or his own specially-approved alternate means of complying with “the intent of the requirement.” On the other hand, that’s not required if grandma seeks a “waiver” instead of an “exception.” (There is no mention of whether there is a

“waiver panel” or if the “exceptions panel” is empowered to handle waivers as well). The regulations also impose an exhaustive regimen of training on grandparents who are likely to be pretty exhausted to begin with from suddenly being called upon to take in the children.

CR was thrilled. But for them it still wasn’t enough. [They issued a report](#) demanding even tougher, more absurd requirements.

The group that so arrogantly calls itself “Children’s Rights” doesn’t know much about either children or rights. Because if you ask almost any child who is old enough, he’ll tell you himself: If mom and dad can’t take care of me, I have a right to be raised by grandma and grandpa.

FOSTER PARENT PAY

CR’s other obsession is raising pay for foster parents. This reflects both poor priorities and the class bias that permeates CR’s advocacy. CR finds it much easier to identify with middle-class foster parents than impoverished birth parents.

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There are several problems with demanding such raises:

- It makes no sense to take money that could be used for safe, proven alternatives to foster care and spend it instead on giving even more to foster parents - who already get more financial help to care for other people’s children than poor people get to care for their own.
- It makes no sense to take money that could be spent on day care so children don’t lose their parents because of “lack-of-supervision” charges and give it instead to foster parents who already make more than the birth parents do – and who may be eligible to have the state subsidize day care for those very same children.
- It makes no sense to take money that could go to a rent subsidy so a child’s own home can be made safe and spend it instead on a raise for the strangers taking the same child into their middle-class foster home.

The issue is not that foster parents are undeserving. Most foster parents care deeply about the children they take in. Many are true heroes. They take understandable offense at claims that they are “in it for the money.”

Often, however, their reply to the allegation is that they can’t be in it for the money because they get so little money. The kinds of big raises CR often seeks would undercut that argument.

While it still might be difficult for a good parent to provide absolutely everything a child needs without dipping into her or his own pocket – something good foster parents who really love their foster children are glad to do – the kinds of raises CR wants to see would make it relatively easy for bad foster parents to, in effect, turn a profit. Thus, in addition to all the other problems, a big pay raise would create an incentive for the wrong people to go into foster parenting.

Would anyone really want to place a child with a foster parent who demanded government reimbursement for buying the child a teddy bear?

Indeed, the pay raise issue raises much deeper questions: What is a foster parent? What is society’s “social contract” with foster parents? Is a foster parent simply a worker who should be compensated for every dime expended on behalf of a child taken into her or his home? Or is a foster parent engaging in an act of charity, someone for whom helping, caring for and, often, loving a child, creates psychic satisfaction such that dipping into one’s own pocket – a little – is reasonable?

CR is so obsessive about the issue that they issued a bizarre, and highly-misleading, [report](#) on the topic in 2007.²⁵

The report claims to compare the amount each state offered foster parents at the time to a so-called “minimum adequate” rate. But the rate figures cited in the report are artificially low, and the estimate of what would be a “minimum adequate” rate is artificially high.

For starters, the report looks only at the so-called base rate in each state. In other words, the lowest monthly rate paid to foster parents for children at ages 2, 9 and 16. But most states don’t have just one rate per age group. Rather they adjust the rates for how difficult the child’s problems are perceived to be.

Furthermore, because these payments are considered “reimbursement” they’re tax-free. And foster parents don’t have to pay for their foster children’s health insurance – it’s covered by Medicaid.

Even more insulting to foster parents are the premises behind CR’s calculation of what is a “minimum adequate” rate of reimbursement. A phrase like that conjures up images of providing just enough money to give a child food, clothing and shelter. One assumes that the rest will be provided by foster parents – because they care about the children they are taking in.

But no. CR argues that, even when foster parents have taken in a child because of a lack

of supervision charge after birth parents could not afford day care, the foster parents should be reimbursed for sending that same child to day care.

And the money that could have gone to birth parents to pay the rent? It should go to foster parents to cover any “extra” cost on their utility bill because their foster child left the lights on – or, maybe, opened and closed the refrigerator a few times. (Some of the information about how CR did its math is in a separate “technical report” that the organization seems to have removed from its website. Fortunately, [it’s still available here.](#))

But there’s more: That “minimum” reimbursement rate includes every penny a foster parent spends on after school activities and admission to movies and amusement parks. CR even wants the government to pay a foster parent to buy his foster child a toy or a video game.²⁶

But would anyone really want to place a child with a foster parent who demanded government reimbursement for buying the child a teddy bear?

CR argues that the current rate structure “drives away potential foster parents...” but they offer no evidence for the claim.

Indeed, foster parents are, on the whole, better than CR gives them credit for.

For starters, even in its own report, CR offers no evidence for the proposition that lower rates worsen foster parent shortages. And there is no evidence that states paying higher rates have less of a shortage. Indeed complaints of such a shortage are chronic in Arizona, even though that is the one state (along with the District of Columbia) where CR claims foster parents are paid enough.

Of course, if a foster parent is asked, “Would it help if you got more money?” he or she will say yes. Even a slightly less loaded question, like: “Would more money make you more likely to remain a foster parent?” will, of course, get an affirmative response.

But when foster parents are asked open-ended questions like: “What are the factors that would make you more or less likely to remain a foster parent?” money tends to rank low on the list. Far more important to foster parents are things like being given adequate information about the children in their care, being consulted about their foster children’s problems, and, most important, being treated with dignity and respect.

According to the National Council for Adoption, “among foster parents who had quit the system, the two most frequently cited reasons for doing so were lack of agency support and poor communication with a caseworker.”²⁷ (Indeed, NCCPR often asks foster parents to reflect on how they are treated and then consider that, if this is how the system treats them, they might want to imagine how the system treats birth parents.)

The things one really needs to do to get and keep foster parents are things money can’t buy.

The best way to reduce a “shortage” of foster parents is to curb the demand rather than

increase the supply. Thus, if whatever money CR wants to spend on the pay raise went, instead, to things like day care, rent subsidies, drug treatment and other ways to support children in their own homes, fewer children would be taken away in the first place, and there would be less need for as many foster parents.

Perhaps CR believes foster parents are so greedy that they won’t do the job unless they are repaid for every toy they buy a foster child. We disagree.

SIGNS OF PROGRESS?

There are small signs that things may be changing, at least at CR itself.

In its lawsuit against the child welfare system in Arizona, possibly the first filed in the post-Marcia Lowry era, the [Complaint](#) actually mentions the soaring rate at which children have been torn from their parents in the state – and implies that it’s a problem. By CR standards, that’s a big change.

And in Texas, while the remedies ordered by the court in Lowry’s suit there are puny compared to the scope of the problem, at least there is no mention of foster parent pay raises or curbing kinship care.

On the other hand, Lowry’s New York City suit suggests she still doesn’t understand what children really need.

Perhaps now that they’ve divorced, Marcia Lowry will move in one direction, but CR will choose a better path. But until then, there will be many more children wronged by Children’s Rights.

¹ Nina Bernstein, *The Lost Children of Wilder: The Epic Struggle to Change Foster Care*, (Pantheon: 2001), pp. 145, 146.

² The affiliation is mentioned in a 1999 press release from Princeton University, *Icahn Family Foundation Gives \$20 Million for New Genomics Laboratory*, available online at <http://www.princeton.edu/pr/news/99/q4/1021-icahn.htm>

³ <http://www.weil.com/providence/>

⁴ Kienbaum Opperwall website, http://www.kohp.com/practice_areas.html

⁵ Tom Condon, “DCF Works to Shift Priorities,” *Hartford Courant*, December 24, 2000.

⁶ Bazelon Center for Mental Health Law, *Making Child Welfare Work, How the R.C. Lawsuit Forged New Partnerships to Protect Children and Sustain Families*, May, 1998: http://www.bazelon.org/LinkClick.aspx?fileticket=vUdhPjx4_E%3d&tabid=104

⁷ “Former Foster Child Tells Panel of Five Lost Years,” *The New York Times*, April 17, 1988.

⁸ This page no longer is on the CR website, but it can be found via the Internet Archive (commonly known as the “Wayback Machine” here:

http://web.archive.org/web/20061009012233/www.childrensrights.org/site/PageServer?pagename=Issues_PreventingFCP

⁹ Full details are in NCCPR’s two reports on Michigan child welfare, available online at <http://nccpr.info/nccpr-michigan-reports/>

¹⁰ Rochelle Riley, “Lawsuit complicates state’s foster care improvements,” *Detroit Free Press* August 11, 2006.

¹¹ Much like a child welfare agency, CR hid behind “confidentiality.” In this case, CR argued that the information is “privileged under a legal doctrine called attorney work product.” But that privilege can be waived for any person or organization that asked CR to come to Michigan and agrees to waive it. But CR refuses to ask them to waive that privilege. Why? CR says that’s confidential, too (Personal communication, Susan Lambiase, Associate Director, Children’s Rights.)

¹² For details and full citations, see this post to the *NCCPR Child Welfare Blog*: <http://nccpr.blogspot.com/2010/03/cr-wins-more-children-will-be-shoveled.html>

¹³ For details and full citations, see this post to the *NCCPR Child Welfare Blog*: <http://nccpr.blogspot.com/2010/03/cr-tries-to-undermine-foster-care.html>

¹⁴ Statement of Marcia Robinson Lowry, Executive Director, Children’s Rights, *Testimony Before the Subcommittee on Human Resources of the House Committee on Ways and Means*, November 06, 2003.

¹⁵ Dana DiFilippo, “Avalanche of Anguish,” *Philadelphia Daily News*, January 21, 2010.

¹⁶ The term “informal” sometimes is used to denote a case in which a child welfare agency arranges the placement, and may require it, but does not take legal custody of the child. Here, however, the term is used to denote a kinship placement in which a child welfare agency is not involved in any way; something that some refer to as “private” kinship care.

¹⁷ Marc A. Winokur, et. al., “Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes,” *Families in Society*, Volume 89, No. 3, 2008, available online at <http://www.familiesinsociety.org/New/Teleconf/081007Winokur/89-3Winokur.pdf>

¹⁸ Carol Marbin Miller, “More Florida foster kids than thought are given mental-health drugs,” *Miami Herald*, May 28, 2009.

¹⁹ David M. Rubin et. al., “Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care,” *Archives of Pediatric and Adolescent Medicine*, 162(6):550-556. Published online, June 2, 2008, at <http://archpedi.ama-assn.org/cgi/content/full/162/6/550>

²⁰ Studies cited in Mark Testa, et. al., *Family Ties: Supporting Permanence for Children in Safe and Stable Foster Care With Relatives and Other Caregivers*, University of Illinois School of Social Work, Children and Family Research Center, October, 2004, available online at <http://www.ocfcpacourts.us/assets/files/table-308/file-186.pdf> and Generations United, *Time for Reform: Support Relatives in Providing Foster Care*. Available online at:

http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster_care_reform/supportingrelativespdf.pdf
Winokur, note 17, supra.

²² Prof. Mark Testa made the remark at a news conference releasing the report cited in note 20.

²³ State of Rhode Island, Department of Children, Youth and Families *Foster Care Regulations 1998* available online at http://www.dcyf.ri.gov/docs/fc_reg.pdf

²⁴ Public Catalyst Group, *Progress of the Michigan Department of Human Services Period Two Monitoring Report for Dwayne B. v. Granholm April 1, 2009 - September 30, 2009*, (Published March 9, 2010).

²⁵ Children’s Rights, Inc., National Association of Foster Parents, University of Maryland School of Social Work, *Hitting the M.A.R.C.: Establishing Foster Care Minimum Adequate Rates for Children*, October, 2007.

²⁶ Ibid; see also the “technical report” for the study, available online at <http://archive.hshsl.umaryland.edu/bitstream/10713/262/1/Hitting%20the%20MARC-TechRep.pdf>

²⁷ National Council for Adoption, *National Council For Adoption Releases Report on Parent Recruitment and Training Expenditures*, press release, October 3, 2007.