The Lost Children Of Foster Care

by Gotham Gazette Staff
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Nina Bernstein met with the Gotham Gazette Reading NYC Book Club at the Jefferson Market Branch of the New York Public Library on May 27 to discuss her book "The Lost Children of Wilder." Through the story of one family and a very lengthy lawsuit, it examines New York's foster care system and its effects on those it is supposed to serve and protect. The edited transcript is below.

Gotham Gazette: This month we read The Lost Children of Wilder by Nina Bernstein. The book is about foster care in New York City. It follows one family -- a woman who grew up in foster care and then had a child who also grew up in foster care -- and one court case for 30 years. As an introduction, Ms. Bernstein is going to read a passage.

Nina Bernstein: At this point, Lamont Wilder has been sent to Minnesota to be adopted. He's been in this family for some time [reads a passage that begins on page 218 in which his foster family tells him he has to leave].

Gotham Gazette: That passage indicates the trauma that both Shirley and her son Lamont face going through the 30-year saga of their family in foster care. Besides it being personally wrenching for the people involved, you also mention that the city spent $530,000 for the 21 years that Lamont spent in foster care.

Nina Bernstein: And he aged out with nine dollars in his pocket, a GED [high school equivalency diploma] and a debt to city taxpayers because he had a small son who was born homeless. It's a costly system, it's a harmful system, and really one of the reasons I wrote the book was to delve deeper into the mystery of why the system is so hard to fix.

We know a lot about the system; people have written newspaper exposes and other books about that. I try to give a historical perspective on the institutions that Shirley and Lamont encountered, and that this 26-year long class-action lawsuit encountered when it tried to alter that structure.

THE WILDER CASE

Gotham Gazette: Can you give us a basic description of the lawsuit?

Nina Bernstein: The lawsuit was filed in 1972 when Shirley Wilder was 13. It was brought by civil liberties lawyers, specifically Marcia Robinson Lowry. It challenged the system that had failed Shirley, who ran away from an abusive home. She was a motherless child, she had been abused, her father was an alcoholic. Everyone agreed that Shirley needed a home, but there was no home for her because all the foster care beds were controlled by religious agencies getting public dollars that were entitled by law to give preference to children of their own faith.

There had been a shift in the demographics of need in New York. There were black Protestant children who needed care, because these were children of the poor, and the agencies that had most of the money and most of the beds were Jewish and Catholic agencies. Children like Shirley had to wait for the leftovers. The lawsuit contended that these agencies preferred white children of any faith to black children: Any non-white child was at a disadvantage.

After a year of waiting in detention for a placement and having agency after agency turn her

down, Shirley was sent to a harsh state reformatory â€“- Training School for Girls at Hudson â€“- by default because there was no other place for her. This was a place for delinquents. She was mistreated there; older girls tried to rape her with a broomstick; she ran away. This is another example of an institution doing damage when it was supposedly there to help.

This was the system that the lawsuit challenged, and it really challenged the whole power structure of ethnic groups in New York. So it was not met with great enthusiasm in the social services community, to put it mildly.

Gotham Gazette: Did it end up accomplishing anything?

Nina Bernstein: That's a tough question.

On the one hand the lawsuit became so becalmed with court hearings and reports and avoidance mechanisms in the legal system that people likened it to Jarndyce v. Jarndyce, the lawsuit in Dickens' Bleak House that went on for so long that people forgot what it meant. I know that my book has been used in some recent attacks on the value of class action lawsuits.

But I think that it did eventually have a meaning, and that using the story that way is a distortion, because the question has to be asked: What was the alternative to this kind of challenge? Clearly you could argue, and certainly Marcia Lowry would, the validity; this challenge was so powerful, so right, that it was met with so much anger and resistance. It can be argued that the biggest impact it had was right after it was filed. It just shook things up; it made visible a situation that was invisible.

But nevertheless you end up 26 years later with the lawsuit being folded into a settlement of a bigger lawsuit that Marcia Lowry brought. City politics had changed; the foster care system was almost entirely made up of children of color so that agencies had to accept them to stay in business.

LONG LEGAL BATTLES

Gotham Gazette: There was a recent article in Newsday, which referred to another case, which the judge referred to as having a "long and tortured history" similar to the Wilder case. Two former foster children brought suit against the city because they were mistreated by their foster families. They said that the city should be responsible for protecting foster children in families that the city has assigned them to. Like the Wilder case, it's been going on for a while. There was a decision two days ago, and the city announced that it is going to appeal. How normal is it for a case, especially dealing with children, to last for so many decades? Is that just a quirk, or a coincidence, or is that standard?

Nina Bernstein: I don't think you can call it a quirk. The whole effort at institutional reform through class action lawsuits is under attack in part because it lasts so long and then the government can say, "Oh, it's just a waste of time and energy. It we didn't have you, the court, micromanaging, we could do all sorts of other things, better things. You're part of the problem now; you're not part of the solution."

One thing that I would stress, though, in opposition to that view is that, especially in child welfare but probably in all very difficult social policy areas, there is a tendency in America to resurrect the solution before last, to make the effort to fix the problem the new problem and to resurrect some failed solution without examining what was wrong with it.

Let me give you an example. We seem to have forgotten that in the Depression, parents gave children to orphanages because they literally could not feed them, could not support them. When Aid to Dependent Children was created, the forerunner of Aid to Families with Dependent Children II - AFDC, welfare - orphanages were full. Contemporaries complained that they were terrible places that raised children who were not good citizens and could not be self-sustaining and so forth. After Aid to Families with Dependent Children, Social Security survivors' benefits and all that, the orphanages emptied. Now we have a situation where the only financial support for families raising children is in foster care. There is no right to welfare. We decided that was a mistake, that it created all kinds of problems.

We now have the Adoption and Safe Families Act, which tries to encourage adoption. That's another solution that has been popular at various times.

But one of the things that has been happening is that a lot of the children's parental rights are being terminated without foster families to place them in. We're creating this generation of legal orphans. Or you see situations like the family in New Jersey that created a business out of

adopting children with subsidies. These are the kids who were starving.

We now are at a place where we say the class action lawsuit is part of the problem not the solution, but it does seem to me that the people go to court because that's the place where these children can, there's a promise that they'll be heard.

LAMONT WILDER TODAY

Marlyn Torres: I was so moved when I read your book. It was really eye opening. I'm curious to know if you have any update in terms of Lamont and his family.

Gotham Gazette: Lamont will be 31 years old on June 4.

Nina Bernstein: That's true. I'm still very much in touch with Lamont, and there's good news and bad news. Some of the good news came out of the book. A partner in Cravath Swain and Moore, a friend of Fritz Schwarz, who has an important role in the case, basically took Lamont under his wing. The partner - he was very impressed with Lamont - gave Lamont a job at Cravath, and he's working there.

The bad news is twofold. One, Kisha [the mother of Lamont's child] has only very rarely allowed Lamont to see his son.

The other, which is a public policy question, is that Lamont's paycheck has been greatly reduced by the child-support arrears that the state is claiming. This is not to give it to the boy, who with his mother has been in and out of homeless shelters, but to pay back the taxpayers supposedly for a period when Lamont himself was living hand to mouth, sleeping in a barber chair, trying to make a living cutting hair, and the child and his mother were on welfare.

It's really an insanity. My colleague at the New York Times, Leslie Kaufman, who now covers social services, wrote a story about the problem of so-called deadbeat dads, some of them coming out of prison with debts of $150,000.

Lamont is in this impossible situation and, because I no longer have to be objective the way I was when I was writing this book, I found him a lawyer who would work pro bono to try to challenge the arrears in Family Court. I testified because I knew the situation he was in at the time he did not pay the child support. He was impoverished and he couldn't pay. The case was dismissed. Maybe there's going to be an appeal, but it's all very iffy.

Meanwhile, just recently the state Tax and Finance Department attached Lamont's bank account - his bank account, which had 45 cents in it - for $11,000. That would have meant, had he not found it out, that his paycheck â€“- and let me tell you, his paycheck is little -â€“ would have been taken because he has direct deposit.

I wanted Lamont to be able to create a home that was an alternative for his son, who is still in a very precarious situation, who could still himself end up in foster care, and it seems as though our policies, the policies toward poor people, toward poor parents, undermine that. That gets me back to this idea I touched on in the introduction to the book but that seems so important to me: It's very hard to fix foster care apart from how we treat poor children in general.

Gotham Gazette: Just to play devil's advocate here, I understand your attachment to Lamont, but what about his now 10-year-old child? In other words, isn't the policy supposed to focus on the children?

Nina Bernstein: The policy is supposed to focus on the children, and Lamont is paying child support. But you have to look at the way this is structured.

Basically, the state, the government, acknowledges that you have all these fathers who are never going to be able to pay these arrears, that this is an impossible debt. This is to us, theoretically, not to the child. Wouldn't it make more sense to help Lamont establish a home where this child can actually come?

There's a rent assistance program run by the Coalition for the Homeless. There was a point where Lamont was commuting from a homeless shelter to his job at Cravath, Swain and Moore. I referred him to this rent assistance program, and they said, "The problem is that his take-home pay after this garnishment of his wages is too small for it to be worthwhile for us to subsidize his rent because he won't be able to live anyway."

It doesn't help Lamont's son to make his father homeless or for Lamont to decide this is hopeless, the thing for me to do is not to have a real job with a paycheck but to go into the underground economy. I'll do better selling drugs or running numbers. And that's clearly what a lot of fathers have done. So something's not working here.

Gotham Gazette: Is the money that's garnished going to his son?

Nina Bernstein: No. As I understand it, the mother, who has meanwhile had another baby by another man, is on welfare again. So all that Lamont's child would be getting is...only a portion, a relatively small portion. A larger sum was going to the mother when she wasn't on welfare and when she was working.

Obviously you want fathers to be responsible to support their children. You also want them to get to see their children and to develop a relationship with them...

In this case I know this little boy wants a relationship with his father. He wants sneakers and school clothes and meals every day and a roof over his head too, of course, but he also needs a relationship with both his parents.

CHANGES IN CHILD WELFARE

Marlyn Torres: Since the book leaves off [in 1999], there have been changes in child welfare in New York City. Elisa Izquierdo died, the Administration for Children's Services was created and there have been other changes in the child welfare system in the last 10 years. Any thoughts on those changes?

Nina Bernstein: I have to say first of all that I am not closely following the Administration for Children's Services at this point and I haven't been in the last couple of years mainly because I'm not covering it. I'm covering immigration now for the New York Times.

But clearly there's been a big change in the Administration for Children's Services since the

end of the Wilder lawsuit. It's interesting because Nicholas Scoppetta, who is often credited with overhauling the agency, doesn't want to give any of the responsibility for the changes to Marcia Lowrey's successor lawsuit to Wilder, the Marisol case. Nicholas Scoppetta says the lawsuit had nothing to do with the changes but he credits the coverage of Elisa Izquierdo's death.

I started writing this book when I was at New York Newsday for which I wrote a two-part series about Wilder 20 years later. I came to the Times in October of 1995, when I was writing the book, with all of this -- or almost all of it -- in my head. So the stories that I and my colleagues wrote about the Elisa Izquierdo case took that death and talked about it systemically. In a sense, that coverage would not have been there without the Wilder case.

That also harks back to this question of the role of a class action lawsuit. There were depositions, there were subpoenas, documents. There was a whole trove of material that documented what the system had done, what its problems were, so this wasn't just a flash in the pan. It wasn't just one bad social worker.

But, now there's the other part, what happened after the Elisa Izquierdo case. At first there was what Richard Wexler, executive director of the National Coalition for Child Protection Reform, calls foster care panic. This girl had been beaten to death by her mother on the city's watch, so they pulled all these kids into foster care. That was supposed to be the safe way to go and, in fact, a lot of these kids were hurt in foster care. It was the wrong thing.

Well, then there was a shift. It's all been very hard to untangle this, but ultimately my sense is we now have an administration that is very much for trying to keep families together, providing preventive services. The numbers in foster care have gone way down. However, again, there's a caveat. If you look back over the history you see there are these roller coaster ups and downs. When foster care numbers go down, reform is possible. It's possible to hold agencies to stricter account and so forth. When demand goes up and foster care numbers go up, it all goes out the window. They throw out the standards. They'll take any bed.

I don't want to downplay the fact that there have been really important and very positive changes in the child welfare system. I like to think that the attention that a lot of people brought to it in lawsuits, in newspaper stories and in books made a difference but I don't think we can rest on our laurels.

IMMIGRATION AND CHILDREN

Gotham Gazette: You mention you are writing about immigration for the Times now. We are in the midst of the largest immigration boom in a century. How has that affected the foster care system?

Nina Bernstein: Clearly there are some impacts, including one that I found very interesting and wrote about. This is young immigrants who come seeking political asylum -- unaccompanied minors trying to rejoin relatives here -- and end up in foster care. There was a terrible problem of these kids aging out of foster care, like so many Americans kids aging out of foster care, without good skills or enough money to make it but, even worse, aging out into statelessness or immediately facing deportation. Even though they might have been in foster care since they were very young, no one had ever gone to the trouble to see that they got green cards and had immigration papers that allowed them to stay or get financial aid for college.

There are also issues in immigrant families regarding methods of discipline that here are considered abuse, or children threatening their parents that they'll call Administration for Children's Services.

But the bigger impact is the poverty in which children of immigrant families often live. We have an idea of how positive it is for children to see their hardworking immigrant parents. Then, they are all going to be strivers and have the success story that we can recall in our parents' or great grandparents' stories.

But the reality is sometimes a little different. You have children who are left at home because the parent is working three jobs. Or you have extremely overcrowded conditions because the only way to pay the rent is for people to be living with 26 roommates, like the New York magazine story about David and his 26 roommates.

Ironically, this may be one of the reasons that the number of kids in foster care is down. Our standard for what is acceptable for the children of the poor may have gone down. I mention in the introduction that in American history there's been a kind of iron rule that "conditions must be worse for the dependent poor than for anyone who works. The seldom-acknowledged corollary is that the subsidized care of other people's children must be undesirable enough or

scarce enough to play a role in deterring parents from seeking it for their children. In the late 19th century, charitable reformer Josephine Shaw Lowell expressed this view when she insisted that "the honest laborer should not see the children of the drunkard enjoy advantages which his own may not hope for."

So, if you have immigrant workers who are being paid less than minimum wage and they can only provide this really very paltry situation for their child, how can foster care be great? If it were, wouldn't it be in the best interests of children for good parents to give them up into foster care? This is what happened in the 19th century when you had this idea of using orphanages as a kind of free boarding home, as a kind of boarding care for the poor.

WHEN FOSTER CARE HELPS...

Darius Ross: My parents were involved in the foster parenting system, taking a child in who had a lot of problems. When I first married, I did the same thing. The question becomes, are we as a minority group missing those kids that are falling through the cracks?

We have formed an organization of wealthy minority philanthropists. What can we do as minorities with money or minorities with wealth to make some transitions?

Nina Bernstein: I do think that there are a lot being missed. There is an interesting theory that it is in the homeless shelter system that you now see kids together with their families, or with their mothers anyway, who previously would have been in the foster care system.

So yes, you are probably missing it. Now my reaction to the idea of a philanthropy of African Americans, or people of color, who would help their own is very mixed. On the one hand, it has this real positive sound, and is absolutely in the same tradition of other groups. It is what happened with the Jews and the Catholics. But I think that there are real pitfalls in the systems in the agencies that are created by this effort. There is always a kind of conflict of interest. You want to keep the institution going, you end up wanting the donors to feel good.

I found extremely valuable the work of Justine Wise Polier, this judge who was so sorry that , after a lifetime of trying to reform the system, she felt she had no choice but to send Shirley Wilder away to the training school for girls. The judge was then in her 70s but she did something that was very valuable: She wrote about the system that she had known at a time

when the poor children in foster care were white, not black. From the description of these institutions, where they had the good set of china for the donors who came, the medium stuff for the staff, and the crap for the children, you realize that class can have a more important effect sometimes than race or religion.

Having said that, I think that foster parents do some terrific work. What was the saving grace for Lamont Wilder? It was that his first five years were with a loving foster mother, who became his de facto mother. As it happened, he was black and she was Hispanic. It wasn't that that was without problems for him. He clearly had a problem with being dark skinned and his mother wasn't. Then when he was sent to white families there were also problems. But the point is he had this loving foster parent. A loving foster parent can be very important. And if your parents were involved in that, if you were involved with that, you know that a foster parent can make a huge difference in the life of the child.

I'm not saying foster care is always the wrong solution. It's just that, on the whole, what you want to do is not make more foster care or more institutions. You want to try to make the necessity for them as small as possible.

...AND WHEN THE SYSTEM DOESN'T HELP

Irene Williams: About three years ago in an agency that purports to represent the needs of children in foster care in the courts, there was a case of a little girl about eight years old who had broken ribs, broken arms, horrible, horrible stuff going on. The Hispanic father claimed everything was fine and he wanted his family back. The person who I reported to at the agency said that there were no places where Hispanic men could comfortably go. Well this is nonsense; there were lots of places where they could go. But [my supervisor's] goal was to bring families back together no matter what. And over this issue we parted.

This was a very bright, young black woman who took her stand and did not deny in any way that it had to do with racial pride and so forth, which is terrific. But the best interests of this child were in no way being served.

The opposite was going on in Chicago, where Patrick Murphy has insisted that children be removed from dangerous situations after one case where a child was returned and was found hung.

Nina Bernstein: My experience as a newspaper reporter covering foster care in three different states over many years is that all systems err in both directions. Even if the philosophy may shift at the top, and there may be an extreme "let's keep the families together" attitude or an extreme "let's take the kid out and run' attitude," that is rhetoric. On the ground, you see the system almost inexplicably leaving kids in abusive situations whether with parents, foster parents or institutions, or pulling kids in circumstances where you feel like a little help is all that is needed. And, obviously, there are situations where they do it right.

In your situation, you had an individual case and an individual worker where it seems as though, from the way you tell it, philosophy and principle were standing in the way of doing what was clearly right for this child. But most of the time it isn't like that.

I remember covering a story about twins here in New York who were accused of raping a neighbor. They were something like 13 years old. It was so monstrous. Then you look at what their experience had been. They were homeless, taken into foster care, moved to and fro, and twins whose twin was all they had left â€“put in separate foster care situations. I'm not saying that it excuses them, but they would have been better off with their mother, who they were back with anyway. But it was at the time of the Elisa Izquierdo case, and the idea was to bring kids into the system.

There is also a money issue. I'm not saying that simply more money is necessarily the answer. But the foster care rate that the city pays has gone down and down. There's a limit to what an agency can provide with what the rate now is.

MONEY MATTERS

Katie Stoehr: Not only has the state rate gone down but New York City doesn't even pay the full state rate to the contracting agencies. They pay about 93 percent of that, and for some agencies that's a difference of millions of dollars a year. That could be more intensive casework, that could be therapeutic support, that could be all sorts of mentoring programs that got slashed years ago. A lot of stuff could happen with that more money.

I've thought a lot about what we can do and it's really hard for a lot of the reasons that you just spoke about. It's impossible to divorce child welfare from general issues of poverty. But the one thing I keep coming back to over the past couple of years I've been working in this system and seeing different sort of child welfare scandals erupt: For a week or two, people care a lot and then they don't. Then they care about something else.

It's hard for a child to advocate for him or herself. It's awfully hard for an abusive parents who's at their wits end, maybe has mental health or drug issues to advocate for him or herself. The kids who are left in foster care right now are mentally ill or have behavioral issues. Some of the teenagers have criminal histories. There aren't often people willing to take a 13-year-old fire starter into their home. So I was glad to hear your tone throughout that this was not this is the evil system doing its evil thing because the system is us. It's our system and if we don't like it we need to all change it.

Nina Bernstein: You make very important points. What you were saying about children not having real advocates or needing advocates helps point out why I end up coming around again, to feeling great admiration, for all her flaws, for Marcia Lowry, who stuck with this. I know there are things that she's done also legally that have angered people, who feel that she is insufficiently sensitive to the needs of poor parents or that she's politically tone deaf. But the fact is that someone who is trying to speak for these children is very important, whether it's someone within the system or someone who's outside the system calling on all of us to do better.

HOLDING ON TO HOPE

Meta Bodewes: I work in the system with parents who have lost their children or in danger. It can be very depressing to think that in 30 years, the system has not changed. I'm sitting in Family Court the other day and I thought, "This is exactly the same. Why are we sitting here for three hours waiting to hear this case? It's going to take two seconds in front of a referee. You wait in line longer than you are actually in front of a judge."

Given that you know Lamont and that you have covered foster care, what gives you hope? You don't sound cynical, you don't sound bitter, angry, you're still very fair. You see all the sides - there's more than two. What is it out of all of the things that you've learned that keeps you so not cynical, which would probably mean you're hopeful?

Nina Bernstein: I think what keeps me hopeful is the human resilience that I saw even in Shirley, the fact that she was proud of the Wilder legacy, and the pain that she felt -- which if I start talking about I'm going to choke up -- when she realized that her grandson was at risk of going into the system.