

# Chapter 3: Case Study: The Fresh Air Fund

## From *The Battle and the Backlash* by David Hechler

*This was a story about an organization that, when confronted with evidence of abuse in its program, denied it had a problem. It was an all too familiar story. But something remarkable happened literally after the ending was written. This organization that for years had tried to ignore reality and shield itself from scrutiny, granted an interview and admitted it had been naive. The interview also revealed for the first time that this charity, which had been locked in an adversarial relationship with lawyers litigating a third successive child abuse lawsuit against it, joined with those same lawyers in forcing the criminal indictment of the alleged abuser in the most recent suit—four years after he had made a deal to avoid prosecution. And then it invited the lawyers, whom it credited with “raising its consciousness,” to participate in the interview and comment on the victory—and the troubles that preceded it.*

*And so this “familiar” story had been transformed into a two-part account that may be unprecedented. It is a story of ignorance exacerbated by denial but finally faced and defeated by the courage it takes to say, “We were wrong.”*

### Denial

Sexual abuse of children on Fresh Air Fund vacations? It sounded impossible. It was like saying the Red Cross promotes malaria or CARE causes malnutrition. Yet there was growing evidence, buttressed by several lawsuits, that children left in the care of this venerable charity were in danger of sexual assault.

The Fresh Air Fund provides free summer vacations for New York City children who could not otherwise afford them. Each summer it sends about 9,000 underprivileged children to stay with host families in so-called Friendly Towns scattered in more than a dozen states and Canada. Another 2,500 stay at four camps in upstate New York.

Private and not-for-profit, the Fund is one of New York’s oldest and most revered charities. Its directors represent a Who’s Who of New York society, and it has the backing of some of the city’s—indeed, the country’s—most powerful and prestigious companies and individuals, including Con Edison, David Rockefeller, and The New York Times Company (which contributes more than \$75,000 a year). All told, donors contribute about \$3 million annually, and the charity’s net worth is more than \$25 million, according to its 1986 tax forms.

But the Fund’s most valuable supporter is undoubtedly The New York Times itself. Times publisher Arthur Ochs Sulzberger is chairman of the Fund’s board of directors, and every year from May through August the newspaper runs laudatory articles and editorials and free full-page ads exhorting readers to contribute to the Fresh Air Fund. Given this kind of support, the charity’s reputation has been nearly sacrosanct.

But the patina had faded—and had begun to look suspiciously like tarnish. Critics said that the Fund’s program was in dire need of revision. It was a system, they said, that relied totally on volunteers and the “goodwill” of its participants. And although the system may have worked beautifully in 1877, when a Pennsylvania clergyman brought nine children from New York City’s slums back with him to the “fresh air” of his congregation’s farms, critics questioned whether the same system could work in today’s world.

The focus of the criticism was three civil lawsuits filed between 1981 and 1984 charging that the Fund’s negligence in its screening and supervision caused children to be abused. All three children named in the suits were black (over 80 percent of the children the Fund serves are black or Hispanic), and two cases involved white host families.

The latest was a \$70 million suit, filed in State Supreme Court in Manhattan, alleging that a 10-year-old child was sexually abused and photographed in “kiddie porn” poses by her host during two consecutive Fresh Air Fund “vacations” in

New Hampshire.

Criminal charges were not filed until December 1986 because the New Hampshire prosecutor who handled the investigation agreed not to charge the man in return for his guilty plea in the sexual assault of his own granddaughters, who were 5 and 7 years old at the time he attacked them. For those offenses the man served 8 months of a 12-month jail sentence (the remaining time was suspended). There is evidence that the molester, who is now believed to be living in Arizona, has attacked other children as well.

Lawyers for both sides said during the interview that the \$70 million lawsuit will be settled as soon as the Fund resolves technical problems involving insurance (its carrier from the time of the abuse has filed for bankruptcy). The other suits have already been settled. In 1985, the Fund paid an undisclosed amount to settle a suit charging that a 10-year-old Brooklyn boy was sexually assaulted by his counselor at a Fresh Air camp four years earlier. The terms could not be learned, and the settlement has not previously been reported in the media because the court file was sealed at the Fund's request.

The other suit was settled in 1983, when the Fund paid \$125,000 to an East Harlem girl who three years earlier, when she was five, was beaten and tormented during her four-week stay with a Vermont couple. The couple ultimately pleaded guilty to criminal charges in connection with the beatings.

Critics have called the Fund a natural target for pedophiles—adults whose sexual orientation is focused exclusively on children—and predicted that further abuse was inevitable until the charity made substantive changes in its program. Their charges seemed to be supported by interviews with convicted pedophiles.

One man now in prison for the felonious sexual assault of a 13-year-old boy was asked during an interview in a prison visiting room if he knew what the Fresh Air Fund was. He nodded. "They're the group that sends kids from New York away for the summer." Would he be surprised to learn that a pedophile had obtained children from the Fresh Air Fund? "I'm not naive," he answered in a memorable understatement. "It must happen in all the groups—scouting, camping, Big Brothers."

The prisoner was undoubtedly right. All those groups are vulnerable. The scandals that have swept the country in recent years have made it clear that child abuse can and does occur in virtually all institutions. The Fund's dependence upon volunteers and its isolation of children from their parents seemed to make it particularly vulnerable to penetration by pedophiles. But what was most troubling was the charity's initial response to the problem.

Many child-care agencies similarly struck were shut down—at least temporarily. But the Fresh Air Fund did not even slow down, much less shut down. And it was not inclined to discuss the matter with critics or the press. Ultimately, it managed to shield itself from inquiry.

The charity backed by The New York Times, whose landmark victory in the Supreme Court (*Times v. Sullivan*) made it the First Amendment's greatest champion, obtained a gag order prohibiting the lawyers litigating the third lawsuit from speaking to the press. The gag order, it should be noted, was aimed at the adverse publicity, in no way stemming the flow of praise in The New York Times.

Following an appeal, the gag order was affirmed in 1985 by New York County's appellate court. Although the court issued no opinion explaining its decision, to heap irony upon irony, the presiding justice of the court had argued with passion and eloquence precisely the opposing position seven months earlier. In a speech at a child sexual abuse conference at Fordham Law School, a transcript of which appeared in the *New York Law Journal*, justice Francis T. Murphy said, "Children have neither power nor property. Voices other than their own must speak for them. If those voices are silent, then children who have been abused may lean their heads against window panes and taste the bitter emptiness of violated childhoods."

He concluded with this exhortation: “Badger every legislator from every county in this state, let no editor or reporter sleep, until the remedy you want is granted. For you are the only voice of the violated child. If you do not speak, there is silence.”

## “Kiddie Porn” in a “Friendly Town”

In an effort to break that silence, an investigation was undertaken with the most recent lawsuit viewed as a case study. Fund executives at the time repeatedly refused requests for interviews and instructed Fund volunteers in New Hampshire and elsewhere not to talk to the author. Some of the details, therefore, remain sketchy. But the following account emerged from dozens of interviews, including many with Fund volunteers who, although still strong supporters of the charity, were sufficiently concerned about the child abuse cases to grant interviews despite the Fund’s admonition.

“Patricia Doe” sent her daughter “Jane” on Fresh Air Fund trips in 1981 and 1982. Jane had just turned 10 and was away from home for the first time when she arrived in the “Friendly ‘Town” of Pittsfield, New Hampshire, to spend two weeks in the home of Don and LaDonna (“Johnni”) Tynan, who were 49 and 46 years old respectively that first summer. Also placed with the Tynans was a young boy named Pedro.

If the other Fresh Air Fund children had seen the Tynans’ house, they might well have been envious. Don Tynan was a commercial airline pilot who made about \$80,000 a year and he and his wife lived in one of the area’s largest and most luxurious houses. Built in 1773, the eleven-room, seven-fireplace ranch house offers a panoramic view from a mountain overlooking Pittsfield. And among the Tynans’ extensive additions to the property were a stone wall, intercoms, and a master bedroom suite complete with a spiral staircase and a Jacuzzi. Postcards featuring a color photograph of the house are still sold in a downtown drugstore.

But the other children’s envy would have been short-lived. According to Jane’s therapist and her mother, the child is still suffering the effects of what happened to her in that beautiful house, although she has made considerable progress in therapy.

As the child’s mother and therapist tell it, the abuse started with baths in the Jacuzzi. Tynan would bathe the girl and then play games like “hide-and-seek.” Later Tynan began exposing himself and eventually got into the Jacuzzi with her. Tynan’s former daughter-in-law, the mother of the grandchildren he sexually abused, said in an interview that sexual contact with her daughters was also begun in the Jacuzzi. (Her name and those of her children have not been published in order to protect their privacy.) Such use of play and games is a common way pedophiles initiate sexual contact, according to Flora Colao, Jane’s therapist and a specialist in treating children who are assault victims.

Jane told Colao that after one week Tynan’s wife discovered what was going on and, following a loud argument, insisted her husband leave home and not return until Jane was gone. The former Mrs. Tynan, now remarried, admitted she asked her husband to leave the house. She denied, however, that it had anything to do with sexual abuse. (She also denied that her ex-husband ever abused their granddaughters, despite his guilty plea.)

Interviewed in her Ohio home in May 1985, Johnni Tynan Bates said she asked her husband to leave because they were having “problems” that predated Jane’s visit. When asked what those problems were, she said, “That’s personal.”

Asked whether her husband ever photographed naked children, she said she herself had photographed him with children in the Jacuzzi. “Don had a swimsuit on. And most kids take baths naked,” she said as she scanned a bookshelf for a photo album—one of forty she has from those days, she said—and, finding it, flipped through about twenty pages of Polaroid photographs. In some photographs children—including Jane—were in the Jacuzzi alone. In others Tynan was with them, arms around the children and smiling broadly. It was impossible to tell whether Tynan was wearing

a bathing suit; the children wore bathing suits in some pictures, but in most they were naked. Several photographs showed Tynan with the granddaughters he sexually abused. There were no pictures of Pedro among those shown, and it is not known whether he was involved in any abuse.

During the second week of her stay, Jane had no direct contact with Tynan, although he called to apologize, according to therapist Colao. The apology, Colao said, was one of the reasons the child returned the next summer. Jane believed Tynan was sorry for what he had done, and she was reassured by cards and letters he sent her during the year. And she believed she could count on Mrs. Tynan to intervene if there were trouble again. But the most important reason Jane returned, Colao believes, is that she was emotionally incapable of disclosing the abuse. And because she could give no reason not to return, she felt she had to go.

But it was a different household to which Jane returned July 22, 1982. There was no Mrs. Tynan to protect her. Johnni said she left her husband for good in May—more than two months before Jane’s arrival—returning to the house one last time on July 2 to pick up her car and clothes before driving to Ohio.

Tynan was coping that summer not only with a recent separation but also with severe financial difficulties that led to the foreclosure on his house a year later. Yet Jane was left alone in his care (Pedro did not return). Tynan is alleged to have repeatedly abused the child, his two granddaughters, and others during Jane’s two-week stay. He also allegedly showed the children pornographic pictures and then had them take turns using his Polaroid camera to photograph each other in similar poses with him.

Jane was penetrated vaginally, anally, and orally with fingers and foreign objects, including a vibrator, according to Colao. Tynan told Jane he was teaching her about sex “so her mother wouldn’t have to teach her,” Patricia said.

It was more than a year after the abuse ended before Jane was able to disclose it. Tynan told her he would go to jail and she would go to a “home for bad girls” if she ever told, Patricia said. Colao added that Jane was “guilt-ridden” and “didn’t know how to begin to tell her mother.” Threats and psychological manipulation, she said, are common means by which abusers keep victims quiet. And most experts in the field say that many—perhaps most—abused children never tell, and that those who do often keep the abuse secret for a long time.

Silence Followed by Silence

Critics of the Fund have said that because many children do not disclose abuse, the number victimized on Fund vacations will never be known. Furthermore, they say, even when abuse is disclosed, it may not be publicized. This investigation revealed several such examples.

Before the gag order was imposed in the \$70 million lawsuit and before the Fund’s attitude changed, attorneys Melvin Borowka and Andrew Vachss, who have represented the plaintiffs in all three suits, were, predictably, the Fund’s most vocal critics.

Vachss (pronounced *vax*) is 44 years old and is a nationally recognized expert on child abuse. He has lectured across the country to groups ranging from social workers to judges. He is a frequent guest on radio and television programs and has written articles and books on the subject; his two critically acclaimed detective novels both deal with child abuse. As far as he knows, he is the only private lawyer in the country whose practice is limited to the representation of children.

He was not, however, a specialist in civil litigation, so before the first suit was filed, he began searching for a lawyer who would take on a case fraught with uncertainty against an immensely powerful and popular adversary that had never before been successfully sued. Add the fact that lawyers engaged in civil litigation are commonly paid a third of whatever verdict a court hands down—but nothing if they lose—and it is not hard to understand the response. Following a long search for a lawyer “willing to take a chance,” as Vachss put it, he found Melvin Borowka, 42, who specialized in

personal injury cases and was intrigued by the challenge, interested in the cause, and convinced that there might be substantial money if they won.

Vachss and Borowka have argued that because parents of Fresh Air Fund children are often disadvantaged members of minority groups who may not trust in the enforcement of their legal rights (often for good reason), and because the Fund's services are free, the parents are far less likely to complain—formally or informally—than are, say, middle-class white clients who pay for a service. Even those willing to complain, they said, may not fully understand their rights and may be discouraged by lack of results. They cited Patricia as a prime example.

Patricia said she contacted the New York City police with the intention of pressing criminal charges soon after she learned of the abuse, in October 1983. They told her the complaint had to be filed in New Hampshire, where the crime allegedly occurred. When she contacted police in New Hampshire, they told her to check the dates of the trips and to have Jane's therapist interview her in order to provide evidence that the abuse had occurred. Patricia mailed them the information, including a transcript of the interview, but never heard back. To this day she has heard nothing from Merrimack County prosecutor Michael Johnson, who took over the case.

Interviewed in his Concord office in October 1984, Johnson said that an investigation was ongoing. But during a follow-up interview there the following April, Johnson changed his story. When confronted with information obtained from David Mancini—then chief of the Bennington (New Hampshire) Police Department but formerly the Pittsfield police officer who investigated the Tynan case—Johnson admitted he had made a deal with Tynan's attorney.

He had agreed, he said, not to prosecute Tynan again unless he was shown evidence that there had been a "greater degree of penetration" in Jane's case than in the cases involving Tynan's granddaughters, adding that he would not reopen the case until he was presented with that evidence. In a separate interview later that month, New Hampshire's attorney general questioned the propriety of Johnson's decision.

As for the \$70 million lawsuit, Patricia did not realize at first that she could sue the Fresh Air Fund. When she first called the Fund's Manhattan office in November 1983 to inform them of the abuse, she spoke with Associate Executive Director Tom Karger (then assistant director of camping), who was eager to meet with her. When they met, Karger told her he had never heard of abuse on a Fresh Air Fund trip and that the Fund would be happy to help in any way it could, Patricia said. She never heard from him again.

Patricia was bitter at the way she and Jane were treated by the New Hampshire authorities and, particularly, by the Fresh Air Fund. Of the Fund, she said, "They lied. They just don't care. If [Karger] knew that they had cases in the past, I think he could have at least called and said, 'How's things going with your daughter?' If they care about children, they should help you after something goes wrong."

(In a recent interview, Karger explained that he had been chosen to meet with Patricia because he had a Master's degree in social work and was viewed as best able to handle the situation. He said his intention was to learn the name of the alleged abuser [so that the Fund could avoid sending him another child], to find out whether the proper authorities had been contacted, and to offer assistance to the family. When Patricia said she had been in touch with the New York police and had been told to contact the police in New Hampshire, which she intended to do, it sounded to Karger as if the necessary steps were being taken. As for his remark about child abuse, Karger remembers saying that he had never heard of a case like it in the Fresh Air Fund, referring to sexual abuse in a Friendly Town—of which there had been no reported cases.

Of Patricia's question why no one called to find out how Jane was doing, Karger said, "It's a good question." Since then the Fund has changed the way it responds to cases of abuse, he said, and a Fund lawyer who was present during the interview added that the decision not to contact the family again was made not by Karger but by a group of Fund officials.)

Although the Fund refused to comment on Patricia's criticism at the time she made her comments, citing the pending lawsuit before the gag order was in place, it had not always been so reticent. In response to the first lawsuit, Fund spokespersons said initially that the child might have been abused but that her own mother was the perpetrator. The Fund, they added, was merely a travel agent and was not responsible for the children it transported.

Finally, after the abusers pleaded guilty to criminal charges and the Fund paid to settle the lawsuit, the charity issued a brief public statement: "The Fresh Air Fund deeply regrets this incident. It would be a pity if this isolated incident were to be taken out of perspective, potentially limiting the success of our drive and therefore the number of children we can help this summer."

Despite the reference to an "isolated incident," there are indications that the Fund began to recognize systemic problems as early as 1985. A Times article said: "Committee members interview prospective hosts at their homes and ask whether the family has pets, where the child will sleep and how the families discipline their own children (the fund does not permit corporal punishment). Those families who wish to continue participating in the program are reinterviewed every three years." (Emphasis added.)

These policies were different from those stated in the 1982 "Friendly Town Chairman's Manual"—obtained from a source—which is the primary body of information available to Fund volunteers. Although on the surface the policies suggested increased vigilance, critics said that they did not go nearly far enough. Moreover, they said, the Fund had no way of knowing whether they were even implemented. No system is perfect, they said, but the Fund's placed children at risk unnecessarily with the distinct possibility, if not likelihood, that in the majority of cases the Fund would never even learn of the damage that was done.

## The System

Patricia registered Jane at one of the forty community centers and agencies around New York City that process applications for the Fresh Air Fund. The Fund made no attempt to screen the children; it merely required an application and a doctor's examination before busing them, in shifts, to and from the 320 Friendly Towns. The shuttles began in July and continued through August.

On the other end, volunteer committees—usually composed of longtime Friendly Town hosts—were responsible for recruiting and screening host families. Committees were usually small, and often the chairperson did the vast majority of the work, which theoretically included advertising in newspapers and on the radio, processing hosts' applications, checking references, and interviewing new hosts. Neither committee members nor hosts were compensated for work or reimbursed for expenses, and many held additional full-time jobs.

According to several former chairpersons, the only training provided for the position was the "Chairman's Manual" and an optional one-day workshop (offered in at least some locations) given by a local representative and an executive from the Manhattan office. As far as could be learned, none of the volunteers or those who instructed them had professional training in child placement or protection.

Although the Fresh Air Fund said that interviews and home visits were required prior to placement, critics have asserted that the Fund had no way of knowing whether this "policy" was followed. No interview forms were sent to the central office, for example. Volunteers were required only to send in forms listing the names and addresses of hosts, their hobbies, and the age, sex, and number of children requested.

There is evidence, moreover, that hosts have received children without having been interviewed at all. The court record of an unsuccessful 1978 lawsuit charging that the Fund was responsible for a child's illness contained the plain-

tiff's account of how the child was placed: "No one came to her [the host's] house. No one investigated anything. One phone call. . . . No interview. No application. . . . You want to take two children from New York City? Yes. All right, and that is about it."

Nor did the Fund's attorney dispute this account: "There was a telephone conversation with . . . the chairlady from that particular area who spoke with [the host] on the telephone and arranged with her and found out where she lived and found out who she was and how many people in her family. Basically told her right there on the telephone to be a host you have to treat the kids from New York like your own and she as a chairlady was convinced that [the woman] was the kind of host that she would recommend to the Fresh Air Fund and she did."

When a personal interview was conducted, there was no uniform procedure that all volunteers followed in making an assessment. Most often they spoke of a "gut feeling" they got from a visit. (In this respect, as in most others, the program in New Hampshire seemed quite similar to programs described by volunteers in Vermont, New York, and Massachusetts.) Roger Stone, whose wife, Teresa, was chairperson of the Concord (New Hampshire) committee for eight years, explained, "We turned a number of people down, and we just went by gut instinct. We're not trained psychologists. We're volunteers—like in the Boy Scouts and Girl Scouts."

Similarly, Audrey Ordway, who also worked on the Concord committee, recalled turning down a widower who wanted a 12-year old boy. "He wanted to know exactly what he was getting," she said. "It didn't hit me right. Sometimes you just have the intuition."

But representatives did not always agree on what was permitted and what was not. Asked how marital status would affect her placement of a child, Ordway said, "I wouldn't place a little girl with a widower, but someone else might. But a divorced man with children of his own? I wouldn't hesitate." As for spanking, Ordway said she told hosts to "do what you do to your own."

Teresa Stone, however, had a different view. "Usually there's no problem getting the same kid back," she said. But "if [the hosts] have gotten divorced or something, that's a whole different story." Of spanking, she said, "I would tell people, 'You can't hit these kids.' To some a spanking is a slap on the leg; to others it's hitting hard."

On two policies, however, there seemed to be unanimity. First, volunteers felt that in order to turn down a host, they had to have good reason. Said Stone of one placement: "We gave him a child. We didn't have any reason to turn him down." Ordway echoed, "We can't refuse anybody that's on the up and up." Second, hosts did not have to be reinterviewed if they reinvited a child. As Susan Picard, former chairperson of the Rochester (New Hampshire) committee, said, "[Hosts] don't have to do another thing except say they want [the children] back."

Beyond such screening—when it was done—there was no supervision during a child's visit or follow-up after a child left. Often a child's only contact with Fund volunteers was on the day of arrival and the day of departure. The reason they did not visit to see how the children were doing was that "you'd never have enough time to visit all the homes," said Stone. And there were no interviews with the children or the hosts after the children left to determine how the program worked.

## What the Pros Say

The professionals in child placement and protection interviewed for this chapter were sharply critical of the Fresh Air Fund's methods.

"I don't think you can any longer just have neighbors looking at neighbors saying, 'They seem nice enough and they want to take a kid,'" said Susan Sabor, director for professional issues at the New York State Council of Voluntary Fam-

ily and Child-Care Agencies, which she said was responsible for placing 90 percent of New York's children currently in child care. "That may have worked a number of years ago," she continued. "Empirically, it doesn't seem to be working now.

"I think we have to take a new look at our social services systems, including places like the Fresh Air Fund, given a whole new set of social variables," she added.

Bennington Police Chief David Mancini said he thought the Fund's view of New Hampshire was naive. "We raise cows, go fishing, and watch the sun set—I think people in urban areas think that's the way it is out here in the woods," he said. "It isn't that way at all.

"If you could work it out on paper, you'd probably find that sexual abuse occurs as frequently here as it does in the city. The only difference is that there are smaller communities where it's all kept quiet."

Ignorance of such matters endangers children, said Don Rabun, the New Hampshire social worker who first investigated the reports of abuse lodged against Tynan. "A pedophile is going to seek out children as a means of sexual gratification. It's only logical that they're going to go to the sources of children." Those, he said, are jobs at day care centers, YMCAs, summer camps, and similar organizations.

But such jobs increasingly require a thorough background check, Rabun said. To obtain a child from the Fresh Air Fund, however, is far easier, and there is presumably less risk of being caught than there is when the pedophile and his victim live in the same community. To minimize the danger to children, Rabun suggested that host families be treated as foster homes. "Instead of looking at them as host homes, [the Fresh Air Fund] should look at them as short-term foster homes and have them licensed and go through the process. It's more expensive, it's more of a nuisance, but the probability of children getting hurt is lessened—probably considerably."

All of those interviewed spoke of the difficulty of child placement, the impossibility of ever being absolutely certain a child is safe, and the need for professional training to minimize the inherent dangers. Marie Miccio, executive director of Big Brothers/Big Sisters of Greater Manchester (New Hampshire), said professional training was "essential" in child placement and that an organization that did not provide adequate training would be "negligent." The director of New Hampshire's Division of Children and Youth Services, David Bundy, called such training "crucial—necessary at a minimum."

There was general agreement that at a minimum the Fresh Air Fund should hire professionals in each geographic region to train the volunteers and supervise their work.

"You have to have the background to investigate," Chief Mancini said. "The perfect background would be an investigator trained in youth services or someone experienced in child abuse cases." Someone like Don Rabun, he added, would be ideal. If the Fund hired one such investigator/supervisor for each state, that person could train the volunteers and critique them, Mancini said. The volunteers should also be given forms to fill out in assessing applicants and these, he said, should be reviewed by the supervisors.

Hiring professionals would also provide an accountability that could help enforce performance standards. "If you get someone who is hired and trained and his job is at stake," said Mancini, "he's going to do a hell of a lot better than an untrained volunteer." Miccio added, "If I make a lot of bad decisions, I don't have a job anymore, where with a volunteer, that wouldn't be the case."

Along with criticism of the training—or lack of training—of those doing the placing, there was also criticism of the Fund's placement methods. All spoke of the need for thorough screening, supervision, and follow-up and suggested procedures by which they could be accomplished.



“If you want to absolutely guarantee as best as you can the children are going to be safe,” said Bundy, “you should have up-front interviews [with hosts], police checks, record checks, reference checks, do unannounced visits while the kids are there and exit visits [with them] after the children leave, and periodic updates and interviews with the [hosts].”

Said Mancini: “I don’t think it would be that complicated to investigate, once you set the criteria.” He suggested the best method for doing so would be to hire professional consultants. “It would take several trained investigators a couple of weeks to set it up,” he said, “but then you’d have some pretty good criteria.”

In addition to case-by-case review, regular evaluation of the entire program was also suggested. Sabor suggested assessments to identify and remedy problems in specific regions, as well as general reviews of the program. A general evaluation would consider such questions as: Would the program be better if fewer children were involved? Are the families generally adequate? Where could improvements be made?

These and other questions ought to be raised regularly, Sabor said, and are particularly important when an organization learns of abuse within its program. “I would like to see [the Fresh Air Fund] socially responsible,” she said. “I would like to see them available to the [abused] kid and the family.

“I think [the Fresh Air Fund] should at least be willing to look at the case honestly and say, ‘Was there something we could have done to prevent this?’”

## **What It Could Have Known and When It Could Have Known It**

It is impossible to say what the Fund actually knew about the Tynans. It is not even certain who was responsible for screening them, but it seems likely it was Jeannie Walton.

Patricia said she was told by a secretary at the Fund’s Manhattan office that her daughter was assigned to the Northwood committee, which was closest to the Tynans’ home in Pittsfield. The committee chair in 1981 and 1982 was Walton, according to Susan Picard, who chaired the nearby Rochester committee those years and who worked closely with her.

Walton declined to be interviewed. Speaking through the screen door of her residence in East Rochester, she said, “I’ve been told not to talk to you.” She would not say who gave her those instructions. Asked if she had placed children in Pittsfield, as Picard said, she replied, “No comment.”

When Johnni Tynan Bates was asked who, if anyone, interviewed her in 1981, she said she could not remember the woman’s name, only that someone from the Fund had come to her house. Unless the case comes to trial, which seems unlikely given the assertion by lawyers for both sides that it will be settled, the full story may never be known. But there was a wealth of information the Fund could have learned about the Tynans.

The most obvious and important was that Tynan’s wife had left him before Jane arrived in 1982. Should the Fund have known this in a town of about three thousand? Mancini said it should. He knew Johnni had left, he said. Referring to whoever allowed Jane to return after Johnni was gone, Mancini said, “Someone should have that person by the short hairs.”

Aside from the possible instability of a man whose wife has just left him and the questionable advisability of placing a girl with a single man, there was another factor to consider. Tynan’s job as an airline pilot frequently took him out of town. During Jane’s visit, he was gone for several days, according to his former daughter-in-law. She remembers, she

said, because Tynan left Jane with her—in violation of Fund rules.

The information available in 1981 was less unusual and more difficult to obtain. But there was a good deal a trained investigator—or someone consulting with one—could have learned.

“The local police are always a good reference,” said social worker Rabun, who suggested that the police be required as one of the three references hosts are asked to supply. The police are a particularly valuable source in rural areas, where they are likely to know everyone personally, Rabun added. That would seem to apply to virtually all Friendly Towns.

Mancini said he would have been happy to discuss the Tynans and other prospective hosts from Pittsfield with Fund representatives. What could he have told them? That the Tynans were having financial problems, that Mrs. Tynan had written bad checks, and that at least one of their own six children had been in trouble.

“Anybody who knew them would be expected to know they were having money problems,” Mancini said. In fact, the Tynans were heavily in debt—so heavily that in September 1981 they filed a Chapter 7 petition with the U.S. Bankruptcy Court in Manchester, and two years later their house was foreclosed on. According to a claim filed with the court, they even owed \$3,107 in child support payments to their own daughter, who stayed in California when the family moved east.

The youngest of the five Tynan boys was in trouble with the law, Mancini said, for persistently driving without a license and registration—until he was finally jailed. “He just wouldn’t quit,” said Mancini, who called the boy “flaky.” Mancini described another son as “screwed up.”

Given this information, even a highly trained investigator probably could not have predicted what Tynan would do to Jane. But a prediction is not required in placing a child. Writing bad checks and raising children who get into trouble indicate an attitude, according to Mancini. “That’s basically what you’re working on—is an attitude,” he said. “That’s all you’re going to get.

“In this case, you don’t have to prove anything,” he said. “You can just pass on a host family.” In theory that is true. The Fresh Air Fund is not required to explain a rejection, as a social agency turning down a foster home must do under New York law, for example. But Fund volunteers said they felt obliged to place a child in a home unless there was a good reason not to.

Was there a good reason not to place Fresh Air Fund children with the Tynans? A Fund representative apparently decided not. But had that representative asked Mancini the same question in 1981 or 1982, he said he would have answered yes.

## **20/20 Hindsight, Foresight**

There are those who will say that Mancini spoke with 20/20 hindsight. What is the use, they will ask, of dredging up the past?

But for Jane, the past is not over. According to her therapist, while her peers are talking about dating, Jane is terrified of having a relationship with a male. She still has occasional nightmares, and until quite recently she had trouble concentrating on school work. She was irritable and often picked fights with her siblings. And she asked questions her mother could not answer—questions like, Why hasn’t Don Tynan been punished? Since the indictment, the question that has most troubled her is, Why did God let this happen to me?

Jane has been receiving therapy, thanks to the efforts of her mother and lawyers. Most experts agree that early intervention and treatment offer abuse victims the best chance of recovery. Big Brothers/Big Sisters of Greater Manchester refers children for professional counseling, if needed, even when a relationship is severed amicably, according to Miccio. If a case of child abuse occurred, Miccio said, the child would be referred for counseling, and the agency would report the incident to the local Social Services Department and would aid them in any way possible. The Fresh Air Fund, by comparison, had not shown a willingness to provide children with therapy or to report the abuse in the first two cases (although it said it would have in the third, had Patricia not already done so).

There were those who said that a strong dose of hindsight was precisely what the Fund needed. If the Fund did not take a hard look at its past, further cases of abuse were inevitable, they said. And even some supporters saw a need for improvement.

“This program is a good program,” said former chairperson Susan Picard. “All those kids wouldn’t have any way of getting out of the city and seeing how other people live and what their options are, nor would our people here have an option of finding out that these kids that they almost think of as ghetto kids or zombie kids are kids that they can love.

“But I can definitely see restrictions need to be tightened up,” she said. Of the Fund’s screening methods, she added, “It’s a loose arrangement—no two ways about that.

“I think that now you’re running into the problem of a lot of women working, which ten years ago they didn’t do so much,” Picard said. “And so you’re having people doing this on a part-time basis because they’re trying to be real nice and they believe in the program. But let’s face it, if you’re already working forty to fifty hours a week, and if you have any size to your program—we put through ninety kids—that would be tough part-time.”

Picard agrees with suggestions that the program could be improved if the police and Social Services provided information for background checks and training for volunteers. “You need some kind of training,” she said, “and you certainly need some kind of review system.

“I can’t be sure that one of our children that came through wasn’t abused,” she continued. “And we were a good committee. I’m sure other committees weren’t as on top of things.”

Along with the other professionals interviewed, Chief Mancini foresaw difficult but necessary decisions in the Fund’s future. Speaking from behind his desk at the Bennington police station, located in a cramped basement beneath City Hall, he said, “People don’t like getting investigated. They get belligerent. You’re going to lose a lot of volunteers and hosts if you go to that method. But you’ve got to do something. The problem is not going to go away.

“Doing nothing,” he added, “is like saying you don’t need a juvenile officer because sooner or later the juveniles are going to be adults.

## Redemption

The change began during the settlement of the second lawsuit, according to C. Stephen Heard, Jr., a lawyer and an officer on the Fund’s board of directors. During a three-and-a-half hour interview in Heard’s Manhattan office, he and Fund counsel Robert Gaynor spoke for the charity, while Vachss and Borowka provided their own perspectives. What Heard and Gaynor discovered during that settlement was that the opposing lawyers were neither lunatics nor mercenaries—two possibilities that had occurred to them before they met face to face.

That first meeting was in July 1985. The Fund lawyers were surprised to find that it was not money that seemed to drive Vachss and Borowka. Nor did what they say seem unreasonable. Heard recalled a question Vachss posed as a

kind of turning point: How would you view it if it happened to one of your children? “I didn’t have to think very long,” Heard remembered. “I’d kill the son of a bitch,” he said.

It is crucial to an abused child’s recovery that she be told what happened was neither her fault nor a figment of her imagination, Vachss explained to them. The clearest and strongest way the message can be communicated, he said, is by telling her that society has punished the person responsible—when it has. “If you’re prepared to change your position and see this for what it is, let’s work together to see that [Tynan] is indicted,” Vachss challenged.

The Fund’s attitude had already begun to change by this time, according to Gaynor, who pointed to the difference between the charity’s response to the first suit and the third. In the first case, remember, the Fund denied any responsibility and even accused the mother of having abused the child. Heard said that the disaster of the first case led to a change in lawyers that brought in Gaynor. In the Doe case, there was immediate acceptance of the situation as Patricia related it and an expressed willingness to help. The charity had come a long way, Gaynor said. But it was not there yet, and they knew it. That was why they decided to accept Vachss’ challenge.

It was extraordinary for a number of reasons. It is rare that adversaries unite, especially in the middle of an emotionally charged lawsuit. They united in order to do what all agreed was truly in the “best interests of the child” (although the New Hampshire prosecutor has strongly questioned those motives). It was also in what they agreed was the best interests of the Fund and the literally millions of children it would serve in the future. Prosecution would send a message not only to Jane, but to the Tynans out there who contemplated molesting or otherwise maltreating Fresh Air Fund children.

The message he wants them to hear, Heard said, is this: “People who abuse in any way children of the Fresh Air Fund are going to be pursued by the Fund and its board and its lawyers to the full extent of the law. And if there’s any misconception in anyone’s mind that we’re going to look the other way because it’s easier or more convenient, they should look at the history of Mr. Tynan in New Hampshire. They’re going to be very sadly mistaken.”

The final pages of that history have not yet been written, but it has been a remarkable story so far. It has also stirred strong and bitter feelings in at least one New Hampshire resident.

## Back to New Hampshire

“Michael Johnson was a brick wall,” Gaynor said during the interview. But the New Hampshire prosecutor did not appear to be a wall at first—or at least not an insurmountable one, Gaynor added.

Vachss had already asked Johnson to indict Tynan on criminal charges. He was convinced Johnson never would and was ready to implement another strategy, but the Fund lawyers thought they might persuade him if they took the lead. In August 1985, Gaynor and Heard flew to Concord and met with Johnson to “insist” he reopen the case. “Johnson’s response was, ‘Don’t call us, we’ll call you,’” Gaynor said. But Gaynor did call—repeatedly.

Johnson was no longer talking about a “greater degree of penetration;” he said there had to be a “greater degree of culpability.” There was talk of his sending an investigator down to New York to interview the child and her therapist. It did not happen. Finally, a videotaped interview of the child was suggested. Gaynor said he was led to believe that if he just had a videotape that met Johnson’s evidentiary requirements, an indictment would be obtained.

Vachss arranged for the interview to be conducted by an assistant district attorney from a suburb of New York City who had experience interviewing children in sexual abuse cases. The prosecutor had never met Jane, and the entire session was supervised by FBI agents, at their headquarters, to ensure there was no coaching or other contamination of the evidence, Vachss said. Gaynor flew back to New Hampshire to hand-deliver the tape.

When Johnson viewed it, he professed he found it credible, Gaynor said. He just wanted to talk to the assistant district attorney who had conducted the interview. It was part of a pattern, according to Gaynor: “He was always raising the hurdle on us.” After Johnson talked to the A.D.A., he wanted a sworn statement from Patricia expressing her wish to see Tynan prosecuted along with an opinion from Jane’s therapist that prosecution would not harm the child. They were delivered—both stated that the child needed and wanted Tynan to be punished—but still no indictment. In their last phone conversation, Johnson told Gaynor: “I’m not going to tell you what the status [of the case] is and don’t call me anymore.” Gaynor described the entire effort as “a year and a half of frustration.”

Vachss was more scathing in his criticism: “To me, the real horror is this: Michael Johnson knew that our child was molested, knew that other children had been molested, knew our child was a Fresh Air child, and never notified the Fresh Air Fund that a person to whom they were entrusting children had been convicted of sexual crimes against other children.”

When the criticism was relayed to him during an interview, Johnson said he would not comment on the merits of the pending case, but he did respond to the accusations. He did not take issue with the basic facts Gaynor described, but he objected to the way his behavior was characterized. He began by explaining his view of prosecutorial discretion.

“Fortunately for our liberties,” he said, “the criminal justice system and the civil justice system are separate and distinct in regard to determining who gets charged, prosecuted, and punished for crimes. And that is fortunate, I say, because we are a free society. Prosecution, in this country, takes that freedom away. And that should not be in any way commingled with financial interests, regardless of how sincere those interests might be. Now I tried to impress that to the Fresh Air Fund.”

Explaining those interests, he continued: “Seventy million dollars at interest, when there is a question as to whether or not Mr. Tynan would be responsible for the financial liability as opposed to the Fresh Air Fund, in my opinion discounts the kind of input one might get from all of the civil litigants, and that’s why the civil process is not part of the criminal process.” While Tynan has not been sued in connection with the alleged abuse, Johnson was apparently referring to the possibility that he will be, and to the presumed effect a criminal conviction would have on such a case as well as on the lawsuit against the Fresh Air Fund.

As to the evidence he deemed necessary to proceed, Johnson responded: “The distinction between the offenses in New Hampshire under our criminal code is the question of penetration. So I indicated to you that if this accusation was of a greater criminal culpability, i.e., a more egregious offense because of the nature of the penetration—which is the distinction between a misdemeanor, Class A, and Class B felonies—then I would consider going forward with it, because that was the understanding left with Mr. Tynan’s initial attorney,” he said, referring to the agreement made during the case involving Tynan’s granddaughters.

“Mr. Gaynor was never led to believe that the state’s prosecution would or would not occur,” he continued. “It’s apparent that Mr. Gaynor . . . sees the criminal justice process as sort of like a Monopoly game. If you get from square one to square ten, you get an indictment. That obviously is not the system in this country—thank God . . . In terms of the hurdles that Mr. Gaynor addresses, they are not hurdles. They are responses to Mr. Gaynor’s insistence that we indict. The indictment is not the goal; justice is. It’s the criminal justice system, not the criminal indictment system.”

Responding to the charge that Tynan could have obtained another Fresh Air Fund child, Johnson said that the man had been in jail, followed by carefully supervised probation. After his conviction, he had a record that could be checked by any organization considering placing a child with him. “There’s no way that this individual could be properly considered for any type of child supervision, period,” he said.

Finally, Johnson questioned the motivation—particularly Andrew Vachss’—that prompted the effort to seek pros-

ecution. “Ask Mr. Vachss what his percentage of the \$70 million will be when and if a judgment is rendered,” he challenged.

“In my opinion,” he continued, “Mr. Gaynor and Mr. Vachss were using the child and her trauma to attempt to convince this office to prosecute, therefore . . . their continuing efforts to make input on the process were discounted because of what obviously was in the best interests of the child at the time. The comment from them was that the child needed closure, the child needed to know that the defendant had been punished for what the child went through. It was clearly explained to them that the man had been punished and the child could be informed of that to provide the closure that they wished. However, they didn’t wish closure under those circumstances . . . It certainly was not, in my interpretation, the kind of support that would be normally offered to the child victim in this jurisdiction. Keeping a case alive for three or four years is not the kind of thing that assists the child in getting over the trauma and providing the child with a closure.”

Vachss responded, “If Michael Johnson is saying my motivation arose from the lawsuit, his problem is that the prosecutorial duty arose way before there was any concept of a lawsuit . . . way before this ever came to my attention.” Patricia contacted the New Hampshire police in November 1983, Tynan pleaded guilty to sexual assault the following month, and the lawsuit was filed ten months later, he observed. “For Michael Johnson to say, ‘Well, the child should have contented herself with the fact that Tynan had been prosecuted’ seems ridiculous to me when the only way the child found out about the prosecution was due to our investigation.” Vachss added that Johnson never contacted the family and never disclosed to them or to him the agreement he made with Tynan’s attorney.

“For him to talk about what’s in the best interests of the child,” Vachss continued, “when he has exactly contrary information from the child, the child’s family, and the child’s therapist is to me indefensible. As far as what percentage we get of any recovery, the percentage is fixed by the court. We’re limited to a third of the recovery, but that’s an outside limitation. A lesser amount can be fixed by the court in an infant’s compromise order.”

Vachss had encountered a similar situation before. In the case that led to the first lawsuit against the Fresh Air Fund, as a matter of fact, the prosecutor never brought criminal charges. He said he needed more evidence. Vachss went public, the press reported their heated exchanges (not dissimilar to those above), and ultimately Vachss turned to the Vermont attorney general, who took over the case and successfully prosecuted. Vachss believed it was a legitimate and effective way to force prosecution in a case where there was sufficient evidence to proceed and where a prosecutor refused to do so without presenting legitimate reasons.

Rather than turn to the press, the Fund officials (no doubt seeking to avoid unwanted publicity) preferred to take the case to the New Hampshire attorney general themselves. By the time they approached the attorney general, they had the videotape and a stack of evidence. An assistant attorney general was quickly assigned to the case, and within a few months Tynan was indicted on three counts of aggravated felonious sexual assault.

How does Jane feel about that? She said she was “happy” and “satisfied” during an interview in the presence of her therapist, Flora Colao. Colao said that Jane’s therapy improved dramatically after the videotaped interview (Colao said she told Johnson as much in her letter) and that Jane improved even more after she learned of the arrest. Making the videotape was not easy, Jane said. “At first I thought it was embarrassing, but then I said, ‘It’s life, you know? It happened. I have to get through it. I have to face it. It happened.’ So it wasn’t so hard to do after a while.”

Jane, now 15, said she never doubted Tynan would eventually be arrested. She feels she has helped others by her action. “If I would have never told, like, many kids would have still been going to Tynan and the same thing probably would have happened to them. I’m glad I stopped it.” She also understands that her experience helped bring about changes of attitudes and policies at the Fresh Air Fund. “I feel good that I’m helping the kids,” she said.

## A New Awareness

Heard and Gaynor described those changes during the interview. “We have to be vigilant,” Heard said. “We can’t pretend it doesn’t exist because we were wrong in Myrick [the first lawsuit]. Forget the fact that we had to settle the case. The child was hurt. We didn’t believe it could be so . . . We were too trusting.”

The changes have included computerizing records, hiring more full-time professionals, training regional representatives more thoroughly, and insisting that chairpersons carefully screen host families. The new attitude has met some resistance, as Chief Mancini predicted it would. “We lost some very good people out in the field because they just weren’t going to do it the new way,” Heard said. There are no illusions that such measures will eliminate all abuse, however.

Said Heard: “You can’t handle many kids in thirteen states and a large camping area and not have incidents [of abuse]. It’s going to happen. But we think we’ve now got a response mechanism and we think we’ve begun to learn something about the people who are . . . expert in this area.

“We think we’re operating today in a much more aware environment, a more responsive, reactive environment, rather than just saying, ‘No, no, it couldn’t be us, no one would do that to our kids,’ which, as you know, basically was the response we had seven years ago . . . We’re not all the way there yet, but we’re making an effort.”

The Fund is determined that cases of abuse be handled immediately and professionally, Heard said. The New York office is now available around the clock for emergencies, and Heard and Gaynor said they are personally notified. When circumstances have dictated, Fund officials have traveled to a site to ensure a child is safe and that proper authorities are notified. But its involvement does not end there. The New Hampshire experience has taught the Fund that it must be proactive, not reactive, Gaynor said. The Fund now follows up with therapy for a child and family members, when necessary. It no longer assumes that simply notifying the authorities is sufficient.

As “a fringe benefit of doing the right thing,” the Fund is much less likely to be sued when it follows such a course of conduct, Gaynor said. Vachss and Borowka agreed, since the victim and family are likely to see the Fund as a co-victim. Furthermore, they said, an agency can only be successfully sued if it is liable. So long as the Fund is acting to the best of its ability to prevent abuse, and to help victims in response to it, a suit is unlikely to succeed.

The new approach has already proved effective in handling a half-dozen emergencies, including sexual abuse, in the past couple of years, Heard said. He openly and warmly credited Vachss and Borowka who, he acknowledged, “sometimes beat us over the head with a stick” before they struck a responsive chord.

Asked near the end of the interview why institutions commonly deny abuse, Heard said “people have an aversion to the subject and find it easier to say ‘Well, that was their charity, that was New Hampshire, that was that lawsuit. Here . . . we’re all friends and neighbors, good Christian people.’”

“By God,” he warned with the conviction of one who has learned his lesson well, “if you don’t see that seamy underbelly, there’ll be more Tynan cases before there are less.”