



Designing for the Senses • Cookie Therapy • Finding Another Voice

The Plain Dealer Sunday Magazine

May 30, 2004

PART I of II

ROAD to RUIN

Bob Kreischer had it all: A happy family life, a job he loved and faith in his country. Then in a scuffle, he made a fist and let it fly.

That moment cost him everything.

MAY 30, 2004

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Bob Kreischer had it all: A happy family life, a job he loved and faith in his country. Then in a scuffle, he made a fist and let it fly.

That moment cost him everything.

Story by
Andrea Simakis

Photographs
by Thomas
Ondrey



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**Bob Kreischer invested everything
in his belief that the American criminal
justice system would save him. (page 6)**

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STAFF

Editor

Ellen Stein Burbach
eburbach@plaind.com

Assistant Editor

Janet Fillmore
jfillmore@plaind.com

Staff Writers

Christopher Evans
cevas@plaind.com
Michael K. McIntyre
mmcintyre@plaind.com
Andrea Simakis
asimakis@plaind.com

Design Directors

Sam Capuano
scapuano@plaind.com
Sharon Yemich
syemich@plaind.com

Advertising Sales

Mary Masterson
mmasters@plaind.com
216-999-4945

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ON THE COVER

The access road leading to Bob
Kreischer's cabin in Perry County.
Photograph by Thomas Ondrey.

MAILBOX

Church vs. Community?

A Supersized Debate (May 9)
speaks of communities' rights to
shape themselves. What right
does anyone have to shape a
community? The issue extends
beyond churches; it impacts
everything from outdoor art to
Costco warehouses.

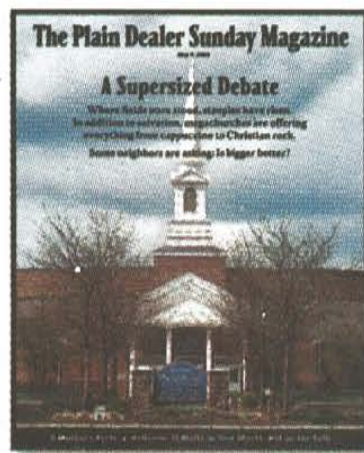
Housing discrimination, public
placement of religious symbols
and school prayer are all attempts
by a community to shape itself.
We don't hesitate to condemn
them. Why should other govern-
ment attempts to shape a com-
munity be tolerated? Does the
First Amendment protect us from
the imposition of any belief sys-
tem, or just selected ones?

Such shaping embodies the
establishment of an official ortho-
doxy. In Cleveland Heights, that
orthodoxy is the virtue of density

and multiple-use commercial
districts. In Lakewood, it is that
posh retail is more worthy than
modest homes. Opposition to
these shaping efforts shows that
their definitions of community
benefit are debatable. Thus, they
are questions of philosophy, world-
view, belief structure, even faith.
Why is one person's belief of what
is the best use of his or her property
any less protected than another's
belief in God?

Citizens and their property are
not a tax farm for local govern-
ment to manage as a dairy does
its cows, to maximize what can be
extracted; we are not vassals of
feudal lords. Why is it any less
egregious for city government to
shape a community as affluent or
high revenue than it is to shape it
as Christian or white? Excepting
objective considerations of public

health and safety, determining
the best use for a piece of land is



the right of the person who put up
enough legally acquired money to
buy it.

Brian Wagner
Cleveland Heights

I am working to have Detroit
Road from downtown Cleveland
through Sheffield designated as
an Ohio Scenic Byway.

I own a historic house on De-
troit Road that I am restoring
and am hoping to work with
Avon and its new Landmarks
Commission to help preserve
properties along Detroit and else-
where in Avon.

From the comments of [Avon
planning coordinator] Jim Pia-
za, we have a long way to go in
educating people about the need
to preserve the scenic semirural
character of the area, and these
churches, with their gargantuan
parking lots, poor landscaping
and striplike construction, do not
help in this effort.

Steve McQuillin
Westlake
Continued on page 26

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at The Plain Dealer Sunday Magazine, Plain Dealer Plaza, 1801 Superior Ave., Cleveland, OH 44114.) Include your name, address and daytime telephone number.

To give all a chance to be heard, we reserve the right to edit for length and clarity. Letters may be published in any medium.

Read us online at www.cleveland.com/sundaymag.



Bob Kreischer spent five years building his dream retreat in the Southern Ohio woods. It was the envy of all who saw it.

PART I of TWO PARTS

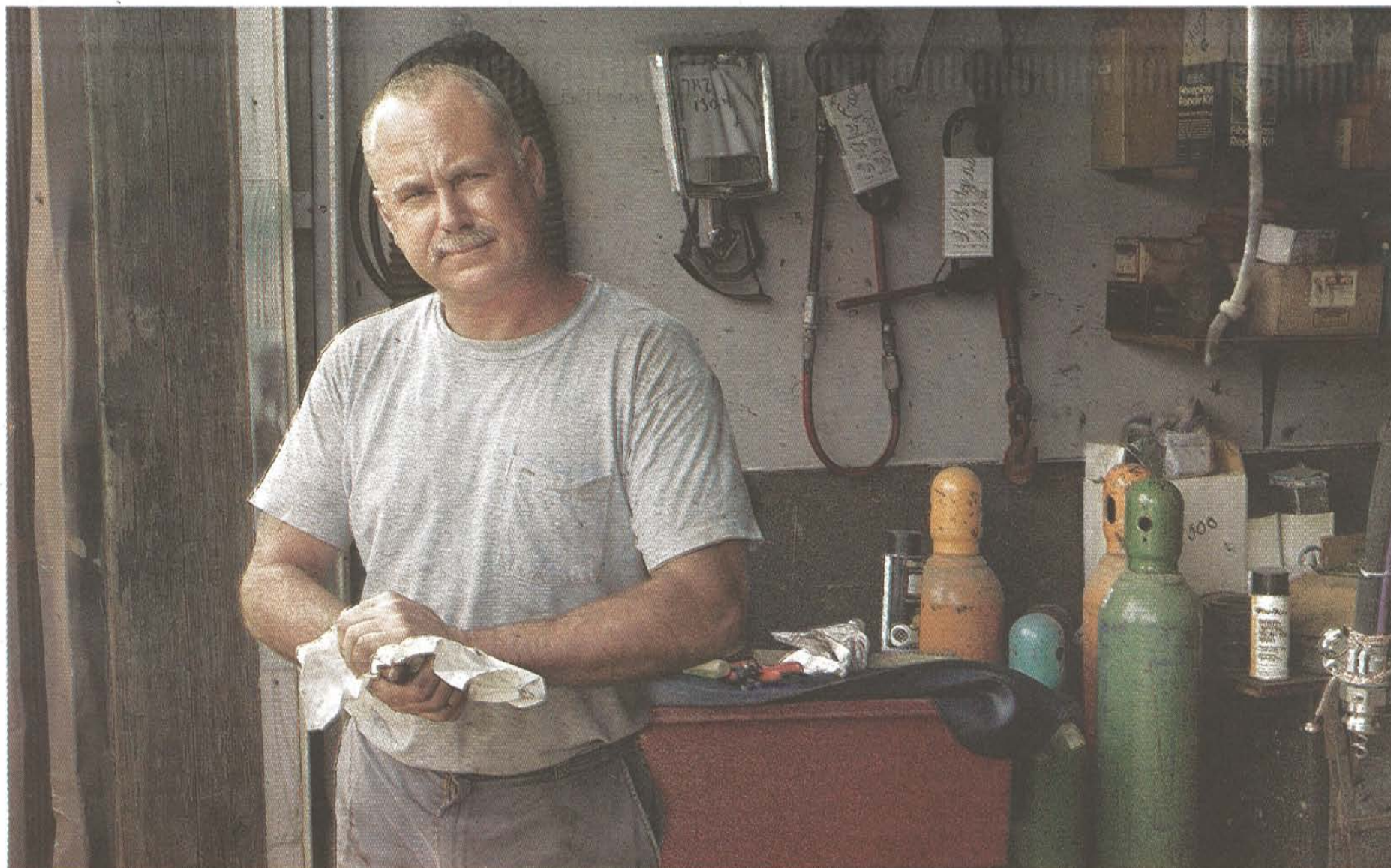
ROAD *to* RUIN



Robert Kreischer had it all: A happy
family life, a job he loved and faith
in his country. Then in a scuffle,
he made a fist and let it fly.
That moment cost him everything.



Story by ANDREA SIMAKIS
Photographs by THOMAS ONDREY



Bob Kreischer spent 17 years working for the same company. It was a job he loved.

“ He invested everything in his belief that the American criminal justice system would save him. ”

PROLOGUE

BOB KREISCHER GRIPPED the steering wheel with callused hands. His wife, Mary, sat stiffly in the passenger seat beside him, her purse, filled with tissues, balanced on her lap. There was no trace of his easy smile as he locked his eyes on the tar tongue of highway lolling in front of him. He said nothing.

What more was there to say?

Mary's friend Karen McCarthy chain-smoked Marlboro 100s in the back seat. Occasionally, she volunteered halfhearted chitchat, the self-conscious, empty chatter employed at wakes.

If the deputy shackled Bob's wrists and ankles and led him from the courtroom today, Mary wasn't sure she'd be able to drive herself home. McCarthy had come along to ferry her back. It was McCarthy's car; it was her CD playing on the stereo.

Tim McGraw's infectious anthem to narrow escapes drifted from the speakers like a taunt:

*And that's why God made Mexico
A place where we can lay low
Where the Cuervo goes down nice and slow
And the warm winds blow
That's why God made Mexico*

When Bob finally spoke, his voice was raw and hoarse, as if he'd been at sea, screaming into a high wind all night.

"You ever rotate the tires on this thing?" he asked McCarthy.

Bob was tired of talking about his case, the three-year ordeal that had begun in May 2000 and had consumed his savings, his kids' money for college, his sleep. It had even swallowed his land, a piece of wilderness he'd saved years for.

There would be no more appeals. He'd invested everything in his belief that the American criminal justice system would save him. Now he was delivering his body to the state; McCarthy's black Grand Am had turned hearse.

Bob looked in the rearview mirror to make sure everyone was keeping up. His was the lead car in a procession of friends and family wending its way from his Leroy Township home, just outside of Painesville, to the Perry County Courthouse in New Lexington, a tiny burg about three-and-a-half hours south, where Heavener's, the general store, sold die-cast models of farm equipment.

Behind was Jim Ponsart, Bob's friend for more than a dozen years, in his beat-up pickup, and Victor Weinmann, Bob's next-door neighbor, in a brand-new four-by-four.

The hearing was at 1 that afternoon. Bob had asked everyone to meet in his kitchen by 7:30 a.m., as if they were gathering for a weekend getaway at his cabin a few miles from the courthouse. But that was gone now, too.

He'd planned it so they'd be caffeinated and on the road by 8, giving them plenty of time, even if they got stuck behind a thresher traveling on a back country road.

Of course, Terry Wooten would be there, too. Bob squeezed the wheel. He wasn't sure what he'd do when he saw Wooten again.

The night before, Weinmann had bet him \$100 he'd be back home that evening, his feet propped on the couch in the living room, seven-year-old Alexandra standing behind him, styling his short-cropped hair with her plastic comb, giggling as she tried to attach butterfly clips to his thinning thatch.

Bob had laughed at the wager.

"Either way, I lose," he'd said.

And that's why God made Mexico ...

Suddenly, Mary twisted around in her seat so McCarthy could hear her above the song. She grinned like she was in seventh grade, ready to yank the fire alarm and run. It was the first time she'd smiled since they'd pulled out of the driveway.

"Call Jim and tell him we're headed south," Mary said. "Real south. Tell him to make sure to call us when the hearing's over and let us know what happened."

Bob and Mary had joked about hightailing it to

Mexico plenty of times before; they'd pictured their family on the lam in Mary's Blazer, their accomplices, Pongo the chocolate lab, Rosky the cat and Alex's dwarf hamsters, jammed into the back seat next to the cooler. The image was absurd enough to draw laughs during those awkward silences that darkened the few happy events of the summer — Alex's birthday party, the couple's 19th wedding anniversary.

It was at night when Bob was alone, wandering their old, renovated farmhouse like a departed spirit, that he would actually entertain the idea of running away. When Mary was balancing the books at Quail Hollow Resort and the three kids were in bed, he would think about heading for the border or the mountains of Pennsylvania. Anywhere but Perry County.

The only time he'd left his country was to serve it; he'd joined the Army at 17 and was stationed in Germany. He loved his stint in the military. It was there he'd learned to fix anything with a motor, a skill he parlayed into a civilian job as a diesel mechanic that was so lucrative, Mary had never had to work full time.

If he were a single man, he would have been long gone. But how could he ask his wife and children to leave behind everything they'd ever known in a cloud of exhaust?

Even now, rumbling down the road toward the courthouse for the last time, Mary believed the judge would show mercy on her husband. Bob wanted to believe it, too.

As he drove, the vast, fallow fields suddenly looked alien.

What was happening to him didn't make sense, but nightmares — the ones you are sure will kill you in your bed if they go on a moment longer — rarely follow any discernible logic. The laws you thought governed the world, the laws of physics, of nature, of man, don't apply.

He'd had bad dreams as a child but could remember only one. It was so terrifying, it haunted him into adulthood:

In the dream, he awakened in the middle of the night to the sounds of his mother, father, brothers and sisters talking in another part of their too-small house. He was almost the baby of the bunch, the 13th child of 14 born to a Pennsylvania coal miner and his wife. Bob slipped out of bed and followed the warm murmur into the living room. No one was there. He heard their voices, floating overhead. He spun around, looking in corners, but found only shadows.

It was the scariest night of his life, but it had ended with the dawn.

No such luck today. The sun was high in the September sky. He was incontrovertibly awake, Mary seated next to him, driving toward a courtroom where he could lose everything.

Over the last few years, it seemed as if all he'd talked about was the punch, his conviction and what it had cost him. He saw how some people looked at him, with their eyebrows raised. They thought he was exaggerating, or worse, lying.

It was hard for them to believe his story.

But maybe there was something more — something about his story that frightened them.

If one punch could turn him from a law-abiding man into a felon, maybe it could happen to them, too.

Methodology: Part I

Andrea Simakis spent a year reporting and writing *Road to Ruin*.

She was in the car with Robert Kreischer as he drove to his final hearing and attended the court proceedings on September 3, 2003.

To gather details for Part I of this story, she visited the property owned by the Kreischers in Perry County, their home in Leroy Township, Terry Wooten's land in Perry County, the Perry County Courthouse and GQ Contracting Co. in Wickliffe.

She interviewed Bob and Mary Kreischer, and Terry and Joan Wooten. She also interviewed witnesses who testified at the trial, including Brian Batross, Jim Ponsart and Gary Wojcik; the prosecuting attorney and Kreischer's defense attorneys; Kreischer's employer, co-workers and extended family; Perry County sheriff's deputies; and the Kreischers' children, Robert, Nicole and Alexandra. Five jurors were interviewed on the condition that their names not be used.

Through a court administrator, Common Pleas Judge Linton Lewis declined to be interviewed for this story. Terry Wooten's attorney, Paul Panico, did not return repeated phone calls.

In addition, Simakis used the transcripts from the trial, sentencing hearing and jury selection; records from the Columbus police, the Perry County Sheriff's Office and the U.S. military; witness statements, trial exhibits and emergency room and medical records; voting, property, family court and driver's license records; records from the Perry County Court of Common Pleas, the Perry County Court of Appeals, the Perry County Chamber of Commerce, the Ohio Supreme Court and the Ohio Attorney General's office; the Ohio Revised Code; and public and private correspondence.

Reconstructed scenes and dialogue are the result of careful interviews and review of written documentation.

All conversations were heard by the reporter herself, confirmed by more than one party to the conversation when possible or taken from legal documents. The scenes depicting Bob Kreischer's call to the Perry County Prosecutor's Office and the serving of the indictment are from Kreischer's memory alone.

When accounts differed, we indicated whose version we were presenting at that time in the text.

The analysis of the emergency room report was provided by Dr. Don Spaner, EMS medical director for the Cleveland Clinic's Hillcrest Hospital.

Ophthalmologist Robert Wenz provided background on the treatment of torn retinas and cataracts.

Ohio Public Defender David Bodiker and Case Western Reserve University School of Law Professor Lewis Katz provided background information regarding grand jury hearings, discovery rules, issues of Ohio law and criminal court procedure.

Lawyers at the offices of the Cuyahoga County prosecuting attorney and the Ohio attorney general provided background on Ohio law governing assault charges and convictions.

For background regarding the plea offer, information was provided by court documents and Kathy Guinther of the SEPTA Correctional Facility.

— THE EDITORS



Bob relished time with his family (from left, Bob, Alex, Nicole and Little Bob at dinner). Bob's father died when he was young; nothing was more important to him than being with his children as they grew.

FOR SOME MEN, freedom is a high-performance sports car. For Bob, it meant roaming unspoiled woods and running into absolutely no one.

He took on Sunday tune-ups and brake jobs after work, saving the \$50 here, \$100 there, for nearly 10 years to buy a little plot of overgrown land in the middle of nowhere.

He cajoled his friend Jim Ponsart to come along. They stole away on weekends whenever they could, sometimes driving more than 400 miles in a day from Painesville to the apron of the Appalachians, combing dusty back roads looking for the right spot.

The farther south they traveled, the cheaper and more ruggedly beautiful the land became. In 1995, they stumbled onto a wild, tangled spread off Pole Cat Road just outside New Lexington in Perry County. Bob didn't hesitate. He called the number on the FOR SALE sign tacked to a tree.

Ponsart couldn't say no. When Bob's restless mind locked on a goal, you either set your sights on the same target or got out of range. Bob fronted Ponsart \$5,000 for his half, plopping down \$10,000 in cash for the deed.

Like the German pioneers who had settled the county in the early 1800s, Bob cleared the dense woods to make way for his cabin. He hauled the lumber for the foundation in the bed of his blue Chevy pickup and lugged flat stones as wide as truck-stop flapjacks from a Pennsylvania quarry to build a fireplace.

His father had taught him the value of doing for yourself. It was the pathway to independence, the only way to be truly free. He was 16 when his dad died of black lung disease and his siblings scattered like billiard balls across the vast green of the country, but he'd remembered the lesson well.

He had imagined his rough-hewn hideaway before buying the land. Once it became real, he chronicled its progress in endless snapshots like a proud parent — from its beginnings as planks of pine stacked in the grass to its final, sturdy two-bedroom maturity, an American flag hung by the front door.

It was hard, dirty work, but he loved taming his personal wilderness, sculpting home and hearth in a place so remote, he had to import a generator to use a power saw. An amateur naturalist, he didn't even mind the copperheads; besides, the snakes were more afraid of him than he was of them.

Terry Wooten bought the property across from Bob's, plus more land behind it, 80 acres to Bob's modest 20. They had to share an access road cut by the oil and gas company years before; it was the only way they could reach their spreads.

When Wooten and his wife, Joan, first saw the forest and the pond filled with bluegill, they thought they'd secured their own little paradise. Wooten wanted to retire to Perry County, but he'd have to spend another several years in Columbus at the post office before he could put down his mailbag.

Wooten couldn't help admiring Bob's deep-woods bungalow, a knotty pine lodge with sliding glass doors and a deck overlooking a gully crowded with pheasant and deer. The Wootens bunked in a trailer.

In the late 1990s, when the two men were still chatting and waving hello, Wooten would wander over and compliment Bob's handiwork. "This place is beautiful," Bob remembered him saying. "You don't wanna sell it, do you, Bob?"

"No," Bob told him. "It's for my family. It's not for sale."

They had been friendly acquaintances then. Wooten gave Bob permission to hunt on his real estate; Bob invited Wooten and his family to use the Kreischers' outhouse anytime. But their association soon curdled. No one can agree on why.

Their polite relations might have gone south when Wooten told Bob and his buddies they couldn't hunt on his property anymore; Wooten found candy wrappers and empty cigarette packs littering the ground and blamed his neighbors for the mess.

Wooten issued signed permission slips to a select few visitors. Everybody else was trespassing. He didn't want Bob or his kids — or anybody else's kids, for that matter — on his land. He said he didn't want to offend, but he was doing it for their own good. What if they got hurt playing on his side of the road? What if they got shot? Their dads would sue him in a heartbeat.

Or it's possible their enmity grew

when Bob discovered that someone had chopped down dozens of his trees, and pointed a finger at Wooten.

Whatever the case, their relationship became so bad that Wooten papered the massive tree trunks on his side of the road with bright yellow *No Trespassing* — *Keep Out!* signs. Bob volleyed back with his own set of signs, creating a Burma Shave corridor of bad vibes.

BOB WAS the only mechanic at GQ Contracting, a job he'd landed when Ronald Reagan was president and kept through Clinton and two Bushes. The Wickliffe construction and drywall company had helped raise some of the grandest buildings on the Cleveland landscape — The Ritz-Carlton, the Rock Hall, Cleveland Browns Stadium.

Bob reanimated dead engines and saved terminal jalopies from the junkyard. He put in five days a week and half a day on Saturday. People relied on him. He liked that. No one could remember the last time he'd called in sick. He'd been a kid when he was hired and he'd grown up in that shop. It was an extension of him, neat and Spartan. Even his red toolbox gleamed. It stood as high as Bob's shoulders. His pocket-sized copy of the Declaration of Independence and the U.S. Constitution was stowed inside. The booklet was a present from his mother-in-law.

He flipped through it from time to time; he especially liked to read the Bill of Rights.

The Constitution was his secular bible, the writings of the founding fathers his scripture. Those men had helped create the only place on earth where personal freedom was valued above all else. That's why Bob said America was the greatest country in the world.

Friends ribbed him about his no-apologies patriotism.

"When was the last time you voted?" he'd chide. "You sit there and you bitch about this government, but you don't do anything to change it."

The first time he'd voted, Bob was a slender recruit with a confident grin stationed in Frankfurt, Germany, dutifully filling out an absentee ballot. Later, not wanting party loyalties to bog him down, he switched from registered Democrat to Independent, and supported candidates on both sides of the ticket — although the avid hunter and member of the National Rifle Association was partial to politicians who promised to safeguard his firearms collection.

At the Kreischer house in Leroy Township, the Fourth of July wasn't just about sparklers and hot dogs. It was to honor the birth of the nation.

Bob spent \$1,000 each summer to feed and lubricate the 100 or so people who swarmed up his drive like advancing troops. Uncles and cousins traveled from Pennsylvania for his barbecue. Guests spiked volleyballs, tossed horseshoes, played croquet and visited kegs set up near the barn. Bob presided over a Viking-sized grill positioned over a fire pit and played chef to the twang of his beloved but much-joked-about Time-Life collection of bluegrass hits.

He'd swig Pepsi, as he only occasionally swallowed a toast at a wedding or sipped beer during a Browns game. His friends and family never saw him drink much more than that. He took a powerful medication to control the arthritis in his knees and fingers; alcohol lessened the effects of the drug and aggravated his condition. If his hands didn't work, he couldn't put in his eight- to 10-hour days at the shop repairing diesel engines, fix the furnace when it broke or build a porch swing for Mary.

Most partygoers stayed the whole weekend, camping out. There were so many tents pitched in the Kreischers' spacious back yard that it looked as if the Army had set up a post there.

Years ago, he'd rescued an American flag from a trash heap, tattered and torn on the ends, ready to be retired, big as the ones that undulate above used car lots. He'd draped it over his barn during an Independence Day party. It was so large, it shrouded the building. All weekend long, small planes from a nearby airport buzzed around the red, white and blue like hummingbirds visiting a bleeding heart. He'd learned the proper way to dispose of a flag when he was in the service and burned it out of respect a few days later.

You didn't just throw Old Glory in the garbage.

IF IT HADN'T RAINED the last weekend in May 2000, Bob Kreischer might never have punched Terry Wooten.

But fate, in the form of a well-placed thundercloud, doused the woods surrounding his cabin, turning the primitive dirt road to mud, and the ruts and potholes along it into tiny shimmering lakes.

He and Wooten told sharply different stories of what happened that Sunday.

The jury believed Wooten.

Bob and his witnesses described the fight this way:

The sound of somebody laying on a horn cut through the leafy expanse and assaulted Bob's ears. It was a little before 7 in the evening, and he'd just driven his family back to the cabin after

spending the afternoon exploring the huge prehistoric caves in the nearby Hocking Hills.

He stopped walking down the steep driveway and turned to his 14-year-old son.

"You leave that four-wheeler in the road?" he asked.

"Yeah," Little Bob answered.

"Go move it."

The boy obeyed, sprinting up the incline to retrieve the all-terrain vehicle blocking the path out of the cool, shady grove. Bob continued trudging toward his friend Jim Ponsart's cabin at the bottom of the hill. He could see his buddy Gary Wojcik, sinewy and compact, on a ladder, handing some shingles to Ponsart on the roof. You couldn't miss Jimbo; he was so tall that when he came over to watch the Browns, he'd have to duck or risk whacking his head on the ceiling tiles in the Kreischers' basement.

They'd finished Bob's cabin first, so Mary and the kids wouldn't have to stay in their tin can of a camper when they visited on holidays and throughout the summer. Now Bob was helping Ponsart raise his.

He heard the horn again, blaring as if it was stuck, and something else. Somebody yelling at his kid.

Bob trotted back up the drive and found Little Bob in the road, frantically trying to start the mud-splattered ATV.

Wooten leaned out the driver's side window of his shiny maroon pickup.

"Move those f----- trucks," Bob

heard Wooten shout.

"I can't even drive," the boy sputtered.

The late-spring downpour had transformed the dirt driveway leading to Ponsart's cabin into a mudslide, forcing Bob's friends who were visiting over the Memorial Day weekend to park alongside the road.

"You get somebody to move those trucks!"

Little Bob had reported similar scenes to his father before and Bob's oldest daughter, 10-year-old Nicole, also complained to her Dad that Wooten had demanded she get off the road as she buzzed around on her minibike, a homemade contraption Bob rigged up using an old lawn mower engine.

"Wooten, what's your problem?" Bob asked.

"What are you doing yellin' at my kid like that? I warned you before — if you got something to say, you say it to me."

"You get those trucks out of the road!" Bob heard Wooten shout again.

Bob told his son to scoot the ATV out of the way so Wooten could pass.

"You got plenty of room," Bob said. "Go around."

The passage was too narrow, Wooten insisted. He might clip his mirrors.

Bob remembered turning to walk away. "Come on, Little Bob," he said. A door slammed. He looked back and saw Wooten jump out of his truck, rip off his glasses, then tear off his baseball cap.

Little Bob didn't know what to do.

He just stood there and watched as Wooten shoved his father, pushing him down the driveway.

"You think you're tough?" Wooten said, and poked Bob in the chest. Once, twice, again.

"Come on," Bob heard him say. "Take a swing at me."

At 37, Bob was 10 years younger and a few inches taller than his neighbor, but Wooten outweighed him by some 10 pounds.

"I tell you what," Bob recalled saying. "You better get back in your truck and get the hell off my property."

Wooten didn't budge.

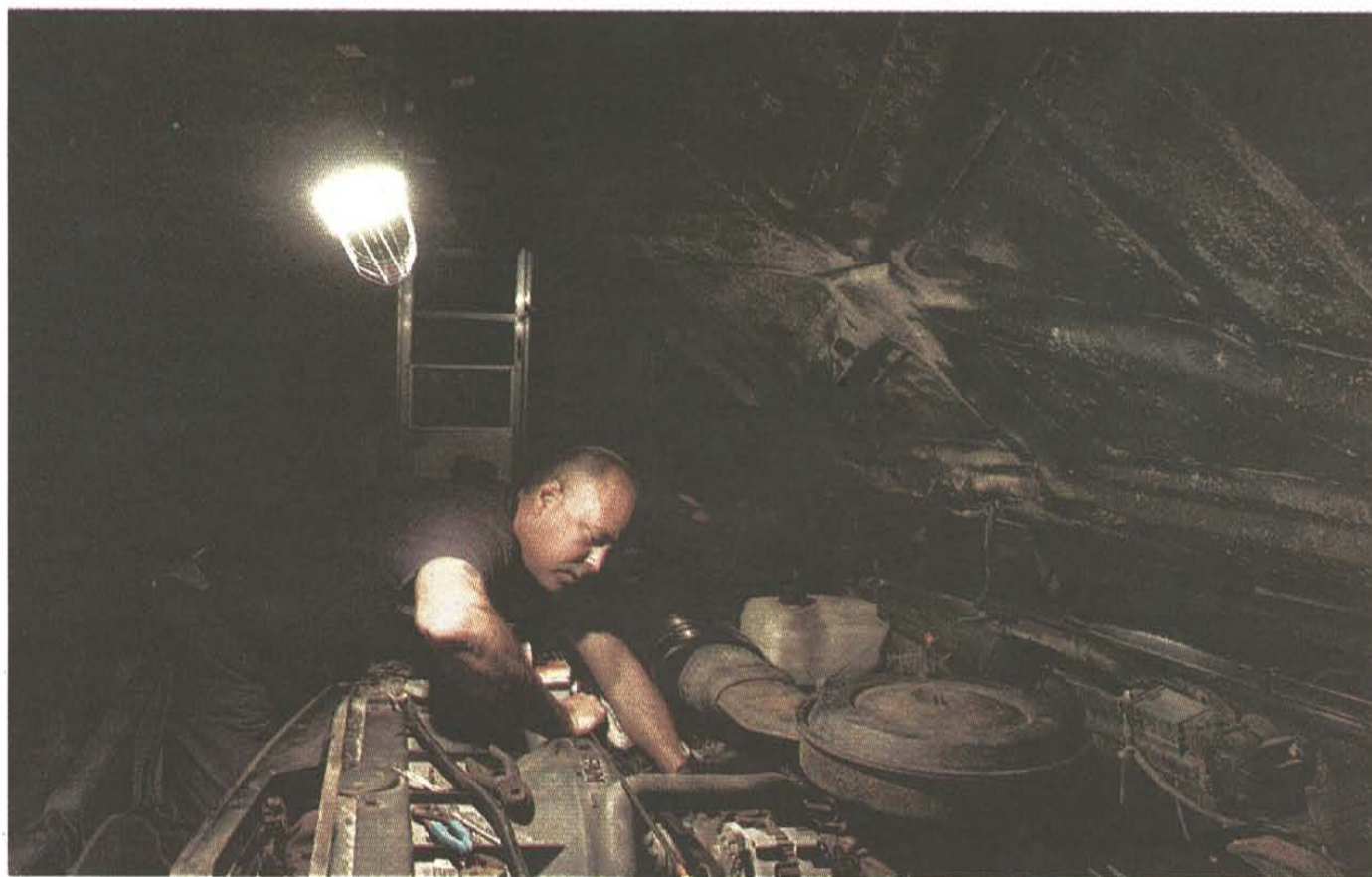
As much as he wanted to, Bob didn't take a swipe at the man right then, not with his son there next to him. Even though Wooten was taunting him, pushing him backward, Bob held himself back — he was afraid he couldn't protect the boy if he and Wooten tangled. Then came a scarier thought: Wooten was a hunter, too. What if he had a gun in the cab?

"You're not so big," Little Bob heard Wooten say. "Come on, hit me."

"Why, so your buddy can jump in and help you out?" Bob asked, pointing to Brian Batross, Wooten's passenger, who'd been watching everything from the pickup.

At an impasse, they reverted to cowboy arbitration. They agreed to take a walk.

"Get on outta here," Bob told his son. As if released from a spell, Little Bob hopped on the four-wheeler. This time,



In addition to keeping the family's autos running, Bob worked on his friends' and relatives' cars, never asking for anything in return.



“Wooten poked Bob in the chest. Once, twice, again.
‘Take a swing at me,’ Wooten said.”

— Bob Kreischer

it came to life and he roared off down the road.

Ponsart watched the ruckus from the roof about 90 feet away. Wojcik loped up the rise to see what all the shouting was about and found Batross, still inside Wooten's pickup. “This is between them two,” Wojcik remembered saying to him. “You stay out of it.”

As Bob and Wooten stalked behind the knot of trucks, Bob planned his next move: If this guy pushes me one more time, I'm gonna slug him.

“Come on,” Wooten said.

Wojcik saw Wooten shove Bob in the chest.

“That's all you got?” Bob asked.

As Wooten moved to push him again, Bob drew back his right arm, balled his thick fingers into a fist and let it fly. He said he remembered aiming for his adversary's nose.

CRACK!

Later, Wojcik would say it sounded as though Bob had missed his mark and hit a tree. Wooten flew into the brambles bordering the road.

“Where's my glasses?” Wooten asked, searching through the underbrush on his hands and knees. “Help me find my glasses.”

Bob scanned the dirt for a moment — he felt a little bad for the guy, crawling around on all fours. Then he remembered. “You threw 'em in your truck,” Bob said.

Wooten rose from the prickly brush and headed for his truck. A blood blister crawled like a caterpillar across the bridge of his nose and an angry red mark ran under his left eye.

“Terry, are you gonna call the cops?” Wojcik asked.

“No,” Wojcik heard him answer. “I ... fought him like a man.”

NOT HALF AN HOUR later, Wooten sat in a chair in the Perry County Sheriff's Office, an old brick fortress squatting across the street from the Beauty Hut salon. His dark, sweaty bangs were matted to his forehead. It was a little after 7 p.m.

He'd driven the four miles into New Lexington to tell deputies his tale. Wooten scrawled out a short statement and signed it:

He'd asked Bob to move the trucks blocking the road and they'd exchanged words. Bob was mad because he'd told Bob and his friends to stay off his property.

“We walked around [the] back of my truck,” Wooten wrote, and Bob “jump[ed] me from behind” and “busted my left eye.”

“While I was on the ground, he kick[ed] my ribs a few times. He also

made the statement that he was going to do the same thing to my kids & wife.”

Later, jurors would hear much more.

Deputy Ed Miller had worn the star on his chest less than two months when he interviewed Wooten and Batross. Their stories were “basically the same,” the deputy wrote.

In his report, he noted that Wooten's eye was heavily swollen. So was his nose.

The rookie typed a shorthand description of Wooten's condition on the front page: “POSSIBLE INTERNAL INJURY, APPARENT MINOR INJURY.”

Wooten told the deputy he was having trouble seeing.

Did he need medical attention?

“No,” Wooten answered.

Did he want to press charges against Kreischer?

Wooten wasn't sure. “I'll decide,” he



“We walked around [the] back of my truck and [Bob] jump[ed] me from behind.”

— Terry Wooten

told the deputy, “after I’m checked out by a doctor.”

Wooten also offered some advice: He warned the young officer that if he was venturing onto Kreischer’s land, he “needed to use extreme caution” because Bob and his friends “have many guns” and “shoot in all directions.”

Bob said he would “shoot anyone coming on his property,” Wooten told the lawman.

WHEN DEPUTY Miller, broad-chested and baby-faced, plodded through the muck to Bob’s cabin that evening, Mary met him in the driveway. He asked to speak to her husband.

“He isn’t here,” Mary told him, “but he’s up the road working on his friend’s

cabin if you want to go talk to him.”

“Is it close by?” the deputy asked.

“He’s right over there,” she said, and pointed through the trees.

He followed her finger, but the passage was muddy. It had been hard enough navigating his cruiser to the Kreischers’ place.

“Have him give me a call,” the deputy said and handed her his card.

At 4 a.m., the phone rang at the Perry County Sheriff’s Office. It was Terry Wooten, calling Deputy Miller from Riverside Methodist Hospital in Columbus. A bone in his face was cracked, he reported.

Wooten hung up and later went home to West Worthington, a neighborhood with stone geese in sunbonnets on front porches, with instructions to see an ophthalmologist in the morning.

Bob had broken Wooten’s orbital rim, the paper-thin bone underneath his left

eye. It is one of the most fragile bones in the skull. In the summer, emergency rooms and urgent care centers everywhere treat kids with the same injury, delivered by high fly balls and line drives that skip off baseball gloves.

THE FOLIAGE shrouding the Kreischers’ cabin ate cell phone signals as well as sunlight, so Bob didn’t call the deputy until he was back in his Leroy Township living room the next day. The conversation lasted less than a minute.

“My wife said you wanted to talk to me,” Bob said.

The deputy asked him if there had been a fight.

He and Wooten had argued, Bob told him. “He kept on pushing me and poking me, so I hauled off and cracked him.”

“Oh, so you *did* hit him?” the deputy asked.

“Yeah, I hit him.”

“OK, that’s all I need to know,” Bob was surprised to hear the deputy say.

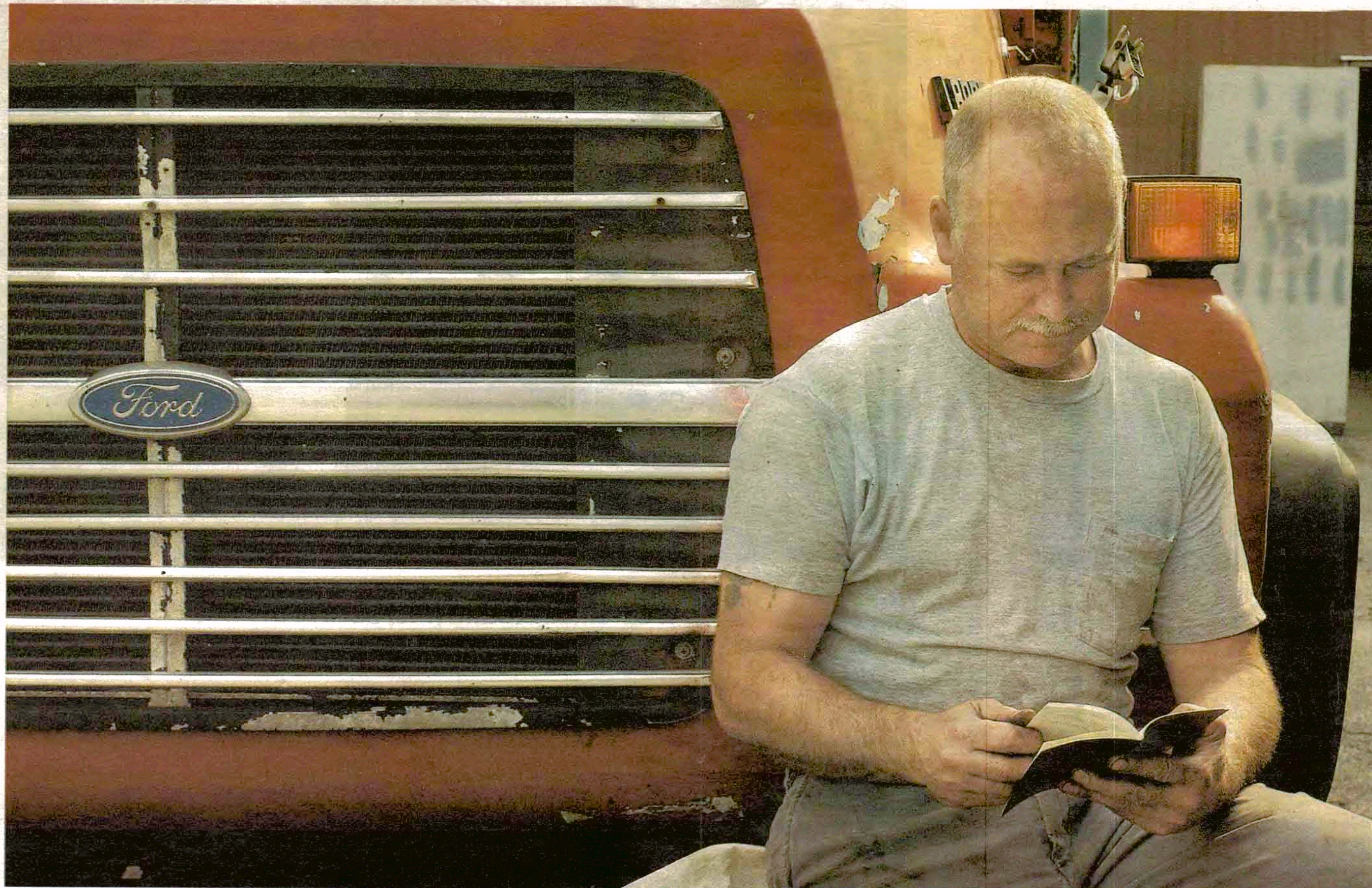
“All right, you got any questions, give me a call,” Bob said. “You got my number?”

The deputy said he did.

A MONTH LATER, the deputy hadn’t followed up on Wooten’s complaint and Bob’s mind slipped into the old grooves: Family, home improvements, work.

It was only June, but Bob’s shop at GQ Contracting was already hot as a sauna. His wall phone let out a feeble bleat. It was Mary.

“You wouldn’t believe what we got in the mail,” she said. “They’re indicting



Bob read his pocket Constitution when he had a rare quiet moment at work. "I've always been interested in what our rights are as Americans," he says. "It's our Constitution — I figure we should know what it says."

you in a grand jury or something like that."

"You gotta be kidding me," Bob said.

Mary began to read him the letter: *Grand Jury Hearing. State of Ohio vs. [sic] Robert F. Kreischer. Violation: Felonious Assault.*

"Felonious assault?" Bob croaked.

Mary went on: *If you are unfamiliar with the duties of the Grand Jury their duty is to receive complaints and accusations in criminal cases, hear the prosecutor's evidence, and decide whether that evidence is sufficient to*

issue an indictment. If you would like to give testimony to the Grand Jury to explain your side you are welcome to do so.

The hearing was the next day at the Perry County Courthouse.

The next day? Hydraulic lifts, giant Ford trucks and smaller pickups were lined up outside the shop door. If the equipment didn't run, the company stalled. Jobs sat unfinished.

Bob called the number at the bottom of the letter and asked to speak to Joseph Flautt, the

longtime Perry County prosecutor.

"I need to explain my side of the story," Bob told the woman who answered the phone. "I need to clear this thing up."

"Hold on," he heard her say. A few beats later she returned to the line. "He says you can come down here and do your talking to the grand jury."

"I can't make it tomorrow," he said. Could the hearing be postponed?

She told him she'd check.

Bob replayed the fight in his head. Perspiration tickled the nape of his neck. How had it come to this? What had Wooten told those people down there?

The woman came back on the line. "Can't be postponed," she told Bob.

They hung up. Minutes later, Bob called back. He was worried the grand jury would think he was blowing them off. Could he write out his story and send it to the prosecutor?

"I'll give it to him," Bob heard her say, "but I

can't promise he'll read it."

Bob dug frantically through his desk drawer for something to write with. He found a blue pencil, the kind carpenters use to mark wood. Its tip was a dull nub.

He grabbed a drywall knife and whittled the lead into a point.

"Dear Mr. Prosecutor," he began. He wrote four pages in deliberate, spiky cursive, taking care to use formal language whenever possible ("Here is my statement regarding the alter-

cation") and using dashes to indicate swear words. In the hour it took him to draft his account, he stopped composing only to carve away more of the pencil when the letters began to fade.

He could feel the muscles in his back relax as he stood over the fax machine in the office, watching it eat each page. Once Flautt read his statement, this whole misunderstanding would be taken care of.

The next morning, Bob called the prosecutor's office. He heard the same woman's voice come over the line.

"Did he get the statement? Did he read it?" Bob asked.

"You'd better get yourself a lawyer," she replied.

"ROBERT KREISCHER?" The voice found him through his screen door.

Bob's stomach lurched. He stopped loading the freezer with brats, burgers, chicken and steak for his annual Fourth of July picnic.

He'd known the indictment was coming, but it had been like waiting for the results of a biopsy on a suspicious-looking mole: it wasn't cancer until the doctor said so.

Bob opened the door for the Lake County sheriff's deputy.

"So," he said, "you gotta arrest me now?"

"No," the lawman told him. "Just show up in court when it says to show up and you should be OK."

The deputy handed him the papers.

Before Bob punched Wooten, the worst thing he had ever done was persuade a buddy schooled in the art of commercial pyrotechnics to shoot off fireworks in a field behind the Kreischers' house on Independence Day. Cars lined the street, drivers leaning from windows to see the illicit display.

Bob called his nephew Ben, a detective with the Euclid Police Department.

"You sure you're reading that right?" Ben asked.

Bob looked at the documents again. "It says right here — felonious assault."

"And you didn't have a weapon, a gun or a knife, something like that?" Ben pressed. "A bat?"

"No," Bob insisted. "Unless my hands are registered as deadly weapons. I punched this guy in the face."

If convicted, he could be sentenced to as many as eight years in prison.

"A prosecutor can indict a ham sandwich," Ben told him. It was a lot tougher, he said, to win a conviction at trial.

Bob felt a little better. Maybe they were just bluffing, blowing up the charges to scare him, but how would he know? He didn't have a law degree — he'd dropped out of high school and later earned his GED while in the military. He made up for his lack of formal education by schooling himself.

Biographies of Franklin, Jefferson and

Adams were stacked in towers by his bed. He became a current-events junkie, reading the newspaper front to back every day at lunch. After work, he watched Greta Van Susteren on Fox. (If you didn't understand the issues on the ballot, how could you vote for them, he'd ask.) He was addicted to the Discovery and History channels.

Still, for all his self-study, he was lost when it came to deciphering the arcana of the legal system. There was no *Encyclopedia Britannica* to give him a crash course in American jurisprudence. But he understood one thing: The Constitution guaranteed him a fair trial before a jury of his peers.

As a soldier, he'd sworn to defend the rights it promised every citizen. Now he was sure the words of the founding fathers would protect him.

THE PROSECUTOR never considered charging Bob with anything less than felonious assault because he'd broken a bone in Terry Wooten's face. Worse yet, in August, three months after their row, Wooten had surgery to repair a torn retina, an injury his doctor said was most likely caused by a blow to the head.

Bob had thrown a mean hook that connected just right. If his fist had traveled a little slower, if the angle of the punch had been slightly different, Wooten might have walked away with a bloody nose.

The fracture changed everything.

It transformed a small-time scuffle into a high-stakes courtroom brawl.

In September 2000, four months before going to trial, the prosecutor offered Bob a plea bargain.

"Some bargain," Bob said when he heard the terms of the deal:

If he admitted he was guilty and paid Wooten's medical bills and lost wages, Bob wouldn't have to do any time in prison.

Instead, he would spend six months locked in a southern Ohio treatment facility designed to help criminals become productive citizens.

There he would receive drug and alcohol counseling, attend anger management classes, and learn how to prepare a resume and fill out an employment application. He would also study good grooming and interview techniques. Eventually, he would be allowed to leave the grounds for a few hours a day to work a minimum-wage job in a community 250 miles from home. The money he'd earn would go to his victim.

He couldn't say no to the offer fast enough: Why should he submit to drug and alcohol counseling? What did that have to do with anything? He didn't have a problem with anger, he had a problem with Wooten, he said. Why should he give up a \$60,000-a-year job with health insurance for one that wouldn't put food on his family's table?

Bob didn't realize it at the time, but the confinement and counseling were Wooten's idea.



Crosses sprout like trees along Perry County roads. Along Ohio 13, leading into New Lexington, a sign boasts that the county is home to the first Catholic parish in the state.

"I want him to go to alcohol treatment and anger management. That's what me and Joanie want," Wooten had told the prosecutor. Flautt had obliged.

Even if Bob had taken the deal and completed six months of lock-and-key sobriety, he'd still have to report to a probation officer for five years. But that wouldn't be the end of it. A felony conviction would stain his life forever, like the bad Army tattoo on his arm, a skull with a drooping black rose between its teeth.

He couldn't run for public office. He couldn't carry a rifle. He'd never again climb the hills around the cabin stalking bucks alongside his son. Little Bob wanted nothing to do with fixing cars and couldn't be dragged into his father's wood shop above the barn, but hunting season brought them together. They'd spend days camped out, just the two of them. Bob wasn't willing to give that up.

He'd take his chances at trial. The way Bob saw it, it was a clear-cut case of self-defense. He figured that anyone in his shoes would have done the same thing.

No jury in the world would convict him.

A LONG OHIO 13, the narrow stretch of road leading into the heart of New Lexington, religion is better advertised than gas or burgers.

"Thompson Insurance, Protecting America, One Nation Under God," proclaims a billboard on the side of a barn. A posting in the front yard of a white-steepled church asks, "Where will you spend eternity? In smoking or non-smoking?"

The clerk of Perry County courts likes to say, "You're in God's country now."

Bob's lawyer knew God's country well. He was a local, exactly what Bob wanted. You didn't show up in a place like New Lexington with a hired gun from the city in Kenneth Cole loafers.

The affable criminal defense attorney had an office on Main Street a few blocks from the Perry County Courthouse, a pink-and-tan sandstone giant

built in 1887 to resemble a European castle. The lawyer kept a plaque on his desk: *May your troubles be few and your blessings many*, read the Irish proverb.

When they first met, Bob handed Robert Aaron Miller a \$2,500 retainer. If he was spending that kind of money before the trial even started, he couldn't imagine what the cost would be in the end.

The *State v. Robert Kreischer* began on January 22, 2001, three days after Bob's 38th birthday. The trial lasted about as long as one of his shifts at the shop. Jurors were seated first thing in the morning and reached a verdict by 6:30 that evening.

Judge Linton Lewis' courtroom was decorated in the style of an ornate, aging funeral parlor — thick, dusty burgundy curtains, high-backed mahogany chairs, gilded lamps with arms twisted into curlicues. The paint on the back wall was peeling, erupting into white, weeping boils, exposing something green underneath. Yet even its imposing mustiness didn't shake Bob's resolve.

When he'd walked in that morning, his shoulders, his stride, his bearing, everything about him said *I don't have a worry in the world*.

In a strange way, he'd been looking forward to his day in court, the chance to finally tell his story. The deputy had barely questioned him.

He couldn't understand how Prosecutor Flautt could have charged him, let alone brought him to trial, without first hearing all the evidence. That would be like trying to rebuild an engine with only half the parts.

Bob's witnesses were more nervous than he was. He'd tried to calm them, fidgeting and uncomfortable in their button-up shirts and polished shoes.

Jim Ponsart was especially anxious. He didn't like to go out much, even for a haircut. People whispered and stared at all 6 foot 10 inches of him. But Bob was his best friend. He'd do anything for him; even put himself on display in a courtroom full of strangers.

"Just go in there and tell it like you seen it," Bob instructed them.

Wooten took the stand first.

He seemed at ease in the witness

chair, his delivery smooth and homey. At one point, he described himself to the jury with self-deprecating charm as "fat." No stranger to litigation, he'd endured two acrimonious divorces, each involving protracted child custody battles.

There was a pulpiness to Wooten, a vulnerability. More than once during his testimony he cupped his ear and leaned in like an old man with a faulty hearing aid. "Pardon," he'd say.

Injured and deferential, squinting at jurors, he was soft-serve ice cream to Bob's glacial resolve.

Flautt, a tall man, gray and serious as an undertaker, asked Wooten to describe what had happened eight months earlier.

Wooten began:

As he tried to leave the woods using the access road he and Bob grudgingly shared, he'd found it blocked.

"I honked the horn," Wooten said. "Bob came up with another gentleman."

"Do you know who the other gentle-

tering report. Another time, he called for a squad car and asked for a female officer because he was "having trouble with his 14-year-old daughter." He also phoned about one of his sons, saying the boy "thinks he is tooooo big for his britches."

Wooten continued:

"Bob said he wanted to talk to me."

So Wooten got out of his pickup. As a precaution, he removed his glasses, "just in case I got smacked," he explained.

Suddenly, Bob didn't want to talk anymore. He wanted to "kick my ass," Wooten said. I told him, "OK, I'm in front of you. Kick my ass."

"I walked behind my truck," Wooten went on. "Bob followed behind me ..."

When his back was turned, Wooten said, Bob grabbed his arm, swung him around, and *WHAM*, cold-cocked him in the eye. The blow cracked the bone in his face.

"I went down," Wooten told jurors, "and he started kicking me." He rolled away, but Bob followed. He tried to

and children, let alone hurting them.

He couldn't stand Wooten, and the feeling was mutual, but he'd always liked Joan and gotten along good with the kids, especially one of Wooten's young sons. In the early days, he'd offer the boy a pop from an ever-stocked cooler and take him target shooting or show him how to catch and kill bullfrogs, skin them and fry up the legs.

It seemed to Bob that Wooten sat in the high-backed leather chair forever, dissecting a series of color photographs labeled exhibits 1 through 5. One showed Wooten's soft flank marked by a faint yellow splotch. The rest were of his face.

No one could miss the oil slick of a bruise running under Wooten's left eye, exactly where Bob said he'd punched him. But other injuries weren't as clear.

Wooten pointed to barely visible nicks and cuts and a small scratch on the tip of his right ear: "You can just see a tiny bit of redness right there," he said. "Where I got kicked."

kicked?" Flautt asked.

"Well, I got a fracture," Wooten began.

Bob's attorney objected, saying Wooten couldn't render his own diagnosis. "He can explain how he felt," Miller said, "but he can't say, 'This is what is wrong with me.'"

The judge told Wooten to stick to his own observations and to steer clear of anything he'd learned by way of medical tests.

Wooten strayed. No one stopped him.

In addition to the broken bone under his left eye, which Wooten said had been cracked and pushed in, he had no feeling in his cheek because his "nerve endings" had been "severed."

"You can come up and pinch the daylights out of my face," he said.

He claimed his left ear was "dead," but he had ringing in his right ear and a "slight hearing impairment." His nose was bruised and very sore. A bone in his neck was "very soft and tender

“ In a strange way, Bob had been looking forward to his day in court, the chance to finally tell his story. The deputy had barely questioned Bob and hadn't spoken with all his witnesses. ”

man was?" the prosecutor asked.

"I don't know his name, no."

"They both had beers in their hands," Wooten continued.

"Did you yell anything or yell for anybody?" Flautt asked.

"No," Wooten said. And he'd never provoked Bob. Never shoved him or poked him.

Bob was "a little intoxicated," Wooten said, but that was nothing new.

They'd had run-ins before, but the most Bob had ever done was push him a little bit. Bob had been drunk then, too, so he never reported it.

"I kind of let it rub off," Wooten said.

"There's no way I ever touched the guy!" Bob whispered indignantly to Miller. "If I had, he would've had the sheriff on me in no time."

Although it never came up at trial, Wooten wasn't shy about calling 9-1-1. Columbus police logged more than 40 calls from the Wootens' address in suburban West Worthington over a period of 10 years.

Once, Wooten insisted that a cruiser come to his house so he could file a lit-

cover up but kept getting "nailed in the head."

Bob, he said, was wearing steel-toed boots when he did it. "I'm assuming that's what he had on," Wooten added at one point. "It sure felt like it."

Bob looked frantically at the jurors. He couldn't tell what they were thinking. *Was Wooten at the same fight I was at?* he wondered.

Finally, Wooten said, the kicking stopped.

He rummaged through the grass on his knees, then pulled himself up. He was woozy, he said; he'd even lost consciousness there for a minute.

He scolded Bob for jumping him from behind.

It was then, Wooten told the jurors, that Bob pointed to Wooten's passenger Brian Batross and delivered a chilling message: "Had he not been here as a witness, you would never have got back up in that truck again. And, if anyone comes down that access road, your wife or your kids, I'll do the same thing to them."

Bob wondered if the jurors believed he was capable of threatening women

Later the prosecutor acknowledged that the exhibits weren't "the best quality," and encouraged jurors to "look closely" to make out other marks on Wooten.

Bob's mind spilled over with questions: If Wooten had rolled along the rain-soaked road to escape his relentless kicks, why wasn't Wooten covered with mud in any of the pictures?

If he'd kicked Wooten even once, he would've split the man's head open like a Halloween pumpkin. Why would anyone have to squint to see the damage?

Why wasn't Wooten's hair caked with blood?

An audiologist took the stand briefly to say that Wooten had lost some hearing in both ears, but that it was impossible to say what had caused the loss or when it had happened.

Under Miller's cross-examination, she conceded a blow to the head or a cold could do it. Nobody could be sure.

Other than the hearing specialist, the only person to testify about the victim's condition was Wooten himself.

"What kind of injuries did you receive from being hit in the face and

from the kicking." His back was tender, too. His vision was fuzzy.

"All of you are blurry," he announced to the courtroom.

An operation, during which "a buckle" was placed inside his eye, had saved his vision, he reported, but in all this time, his pain hadn't lessened.

When it was cold out, his eye really hurt — like "a headache and toothache" combined.

"I mean, it's not so bad that I'm going to get up and cry about it," he said.

WOOTEN'S BODY told another story, one jurors never heard. It was buried in the pages of an emergency room report.

When he arrived at Riverside Methodist Hospital in Columbus, he was assessed and listed as "non-urgent," which put him at the bottom of the ER pecking order, where people complaining of sprains, minor sore throats and colds are usually relegated.

The nurse who first spoke to Wooten

at 10:30 p.m. made no notation on her chart that he had been kicked in the head. That detail didn't show up in ER records until midnight, an hour and a half after Wooten had checked in.

While he waited to see the doctor, he was given ice to apply to his bruised eye and a light narcotic with an anti-inflammatory to reduce pain and swelling.

Wooten told jurors he'd been kicked in the neck, but X-rays taken of his cervical spine showed no evidence of a fracture or dislocation — the muscles and tissues around it weren't swollen.

He'd testified that he'd been kicked in the throat, but Wooten's doctor made no mention of injuries to his larynx, trachea or esophagus. The doctor also noted his mouth and tongue were fine and his jaw opened and closed normally.

Jurors heard he'd been kicked in the back; film of his spine revealed some arthritis but nothing broken, nothing out of place. He'd said he'd "covered up" to protect his head from the blows, but the doctor noted no bruising, tenderness or pain in his arms.

Wooten said he'd been kicked in the ribs, but when probed by the emergency room physician, the doctor noted they weren't tender to the touch and didn't appear to be broken. Fractured ribs often make it difficult for patients to breathe, but Wooten's breathing was normal.

He told jurors he'd been kicked in the ear, but the doctor found no blood, no swelling.

Wooten testified he'd briefly blacked out, yet the ER doctor recorded "no obvious loss of consciousness." Wooten said he was "dazed" and "feeling light-headed."

He wasn't vomiting or complaining of memory loss, all telltale signs of a concussion. A CT scan of his head was normal. The doctor noted a black mark on the scan — a place where a tiny section of gray matter had been liquefied — and identified it as scarring from an old stroke. He also wrote that Wooten had high blood pressure and heart disease.

The patient was awake and alert, the doctor added — just complaining that he couldn't see very well out of his swollen left eye.

Wooten had a mild scrape on his back on the right side — when the doctor touched it, Wooten told him it didn't hurt — and some bruising on the right side of his head, behind the ear.

A CT scan of Wooten's face showed a fracture in the bone surrounding the left eye. The thinnest part of his orbital rim had also been pushed down slightly. Luckily, there was no "entrapment," a condition that requires surgery because the depression of the bone is so severe, it squeezes the muscles that

move the eye.

Most orbital rim fractures heal with antibiotics and time.

The doctor put a little drop of a stain into Wooten's eye and searched for scratches on his cornea and other damage but found none.

Bob's attorney had a copy of the emergency room report, as did the prosecutor. Neither called an M.D. to the stand.

Had a doctor been asked to testify, he might have come to the conclusion reached by longtime emergency room physician Don Spaner, EMS medical director for the Cleveland Clinic's Hillcrest Hospital, after he'd reviewed the ER records.

"The only thing we're seeing here is



Five photographs, including these three, were the only exhibits presented to the jury. "... Look at these injuries," the prosecutor told jurors. "Reason and common sense dictates there's been more than one blow struck on Terry Wooten."

“ Bob’s attorney had a copy of the emergency room report, as did the prosecutor. Neither called an M.D. to the stand. ”

one isolated blow to the face," he said, "and what sounds like a fall."

THE SMALL cheeseburger sat in Bob's gut, a doughy dam holding back a river of bile. He hadn't been the least bit hungry, but he was afraid if he didn't eat something during the lunch break, he'd be sick. He was in trouble. He knew it.

He tried to explain it to Mary as he sat hunched in a plastic booth at McDonald's. She wasn't allowed in the courtroom because she was to testify later that day. She hadn't heard Wooten

on the stand.

It was the way jurors looked at him afterward, as though he was something gooey on the bottom of their shoes, that had made his stomach sour.

He'd wanted Miller out of his chair, battering Flaatt with objections. Instead, his lawyer had barely stirred.

When the trial resumed that afternoon, he still felt queasy.

Flaatt called his next witness. Jurors liked 25-year-old Brian Batross. He was a nice-looking kid. Clean-cut. Polite. One woman would later comment that she was impressed because he was a "military boy."

(They never learned that Bob had spent six of the proudest years of his life

ten, curled into a fetal position. There was Bob, kicking his friend "like six or seven times" in the head, ribs and shoulder.

Before he left the stand, Batross said Wooten's swollen eye was caused by a well-placed kick to the face. A kick he'd witnessed.

IT WAS AT TRIAL that Bob finally saw the sheriff's deputy who'd come looking for him the night he and Wooten scuffled.

While being questioned by defense attorney Miller, the deputy said that he'd spoken with Wooten for at least 20 minutes — and taken notes on that conversation. He'd talked with Batross, too, and jotted down portions of that interview. He'd also had a brief phone conversation with Bob the next day.

"Did you ask him whether there was hitting or kicking that took place in this altercation?" Miller asked.

"No sir, I did not," the deputy answered.

Had the deputy collected any evidence from his client? A pair of boots?

"No sir," he answered.

Had the deputy asked Bob if anyone witnessed the fight? Had he collected any names for his investigation?

"That I do not recall," he said.

"Would you have written that down?" the lawyer pressed.

"Yes sir. I would have."

"Where would that be recorded?" Miller asked.

"That would have been recorded in the report," the deputy answered.

It was four pages long "plus statements," he said.

Bob scribbled on his legal pad: "4 pages? Statements?"

He'd asked for a copy of the police report before trial. So had his lawyer. They received a few pages that offered little more than Wooten's name and address and a description of his job — oddly, the full-time postal worker wrote "dive trainer" under "Occupation." A sergeant at the sheriff's office had explained the rest of the report was off-limits.

Later, when Miller asked the prosecutor to turn over all evidence that would help him defend his client, Flaatt said he had provided everything he was supposed to.

Now, Bob's lawyer asked to approach the bench.

"Your Honor ... I've never been given the police report in this case," he said. "I need to look at it and see what ... further investigation was done in order to continue with this officer."

The prosecutor said that he'd already given Miller everything. "That's all

in the Army. It just never came up.)

Batross' testimony mirrored Wooten's, with a few significant exceptions:

He told jurors he remembered seeing Bob's son on the road soon after Wooten beeped his horn, not "another gentleman."

And he swore that he'd seen Bob sock Wooten twice, although he was the only person to remember it that way.

Batross admitted he was too far away to see exactly where the blows landed — he'd watched most of the fight through the tinted windows of Wooten's pickup.

Once Wooten was on the ground, however, Batross said he was able to see everything clearly: There was Woo-

there is," Flautt told the judge.

Miller reminded Judge Lewis that the lawman had said his report was *four* pages.

"He's got the whole report that you have?" Lewis asked the prosecutor.

"Yeah," Flautt said.

"He's got the same report?" the judge pressed, still not satisfied.

The prosecutor shifted ground.

"I don't [have to] give him the police report," Flautt said. "They aren't entitled to it in discovery."

That answer would later become the focus of Bob's appeals.

In many states with "open discovery," prosecutors are required to share all their evidence with defense attorneys. In Ohio they're not, unless the evidence would tend to help the defendant's case. The catch: Prosecutors decide what qualifies.

After more prodding from the judge, the prosecutor relinquished several sheets to Bob's attorney.

Miller examined them.

"It's my understanding, Mr. Miller, that you have reviewed the reports from the ... sheriff's department at this point, and you are in agreement that you have everything that should be available to you, is that right?" the judge asked.

"After reviewing it, yeah," the lawyer replied, and handed the hard-won documents to his eager client at the defense table.

They were written in pencil in Bob's own self-conscious hand. It was a copy of the fax he'd sent to the prosecutor so many months before.

"That's *my* statement," Bob whispered, incredulous. "Where's the rest of the police report?" Bob hissed. "No statement from Wooten? No notes from the police investigation?"

"That's all he gave me," Bob remembered Miller saying.

"You've gotta be kidding me," Bob said, clutching the pages. "This is all he has?"

Miller soldiered on, without the knowledge that the story in Wooten's statement — the one he'd written the night of the fight — didn't match the one he'd just told on the stand.

He'd never told deputies he'd been kicked in the head. Neither had his witness.

Jurors never had the chance to wonder why.

BOB'S KNEES bounced in anticipation, but he had to wait. He was slated to testify last. The trial had started only hours before, but it felt as though days had passed.

"Defense may call their first witness,"



If Bob could win some celestial do-over and relive that day, he would not hesitate. He'd still send Terry Wooten sprawling into the prickly woods bordering the road that separated their two hostile camps.

the judge said.

Gary Wojcik, who'd been helping shingle Ponsart's cabin roof, said he was at Bob's side by the time Wooten landed in the dirt. "Bob hit him one time," Wojcik said.

"Did you see Bob Kreischer kick Mr. Wooten?" Miller asked.

"No, not at all," he replied.

Little Bob stepped up next. He displayed an unnerving coolness on the stand. Like his sisters, he'd inherited his father's direct, unwavering gaze.

Little Bob would never forget meeting Wooten on the road.

"Mr. Wooten kept yelling: Move the F-ing trucks," he said, careful not to use the swear word.

His father arrived. Wooten shoved and Wooten poked. That scared him.

"Mr. Wooten kept saying, 'You're not so big. Come on, hit me. You're not so big,'" Little Bob said.

"And what did your dad say?" asked Flautt.

"He said, 'Just get out of here,'" Little Bob recalled.

Ponsart didn't share the boy's laconic disposition. The air was charged with the ions of the tall man's discomfort.

When Wooten came barreling down the road, "honking, honking, honking," Ponsart was on the roof of his cabin.

"Were ... there any trees or brush, or anything that would impair your view?" Miller asked his witness.

"Yeah," Ponsart admitted. The men kept popping in and out of sight.

"Did you see Bob throw the punch?" Miller asked.

"Yeah," he answered.

"Could you see him clearly?"

"Yeah, pretty clear," Ponsart said.

He testified that he'd seen no kicks.

Ponsart's uneasiness only grew under Flautt's pointed questioning.

When Bob and Wooten walked behind the pickups, the prosecutor asked, which side of the road did they walk on?

"I can't tell," Ponsart said miserably, "because there was a big brush pile there. ..."

Later, a few of the jurors would say they took Ponsart's stage jitters as a sign he was lying. And how could they trust Wojcik? He and Bob had been tight for years. Others dismissed Little Bob's testimony as the words of a child willing to say anything to save his father. And Mary? She hadn't seen anything except the face of her frightened son.

"Your Honor, I'll call Robert Kreischer," said Miller at last.

BOB SPRANG from his seat and took center stage with the energy of an understudy finally called to assume his rightful, starring role.

He wasn't especially imposing, but jurors saw a man who walked with his shoulders thrown back, giving him a few phantom extra inches, as though he was still standing at attention in front of his drill sergeant. Although his arms were rounded and hardened by years of torquing wrenches under the hoods of a thousand grimy diesels, Mary teased him about his skinny legs.

He watched their faces as he told his story and saw them lean in attentively, as though they, too, had been anxious for his debut. The confidence he'd felt that morning returned.

Sure, he'd gone behind the trucks with Wooten, he said.

"He walks around like he's Wyatt Earp. He's never without his gun. I just wanted to get him away from the truck,

from my son, and try to defuse the situation."

But Bob said Wooten kept pushing.

"I smacked him right in the eye," Bob said without a dollop of regret.

"Did you kick him?" his lawyer asked.

"Absolutely not," Bob answered.

"Did you think he was going to try and hurt you?" his attorney asked.

"Oh yeah," said Bob.

It was the way Wooten was shoving him, high on the chest. "I thought maybe he was going to hit me in the throat," Bob told jurors.

"Had you been drinking that day?"

"No," Bob said emphatically. He'd spent the afternoon with his family hiking through Old Man's Cave. The Blazer's engine was still warm from the trip when Wooten started honking. Mary and the kids would never have gotten in the car with him if he'd even been tipsy.

"Did you have a beer can with you when you walked up?"

"No, absolutely not," he said.

He felt restored, impenetrable. He couldn't wait to face off with the prosecutor.

"Cross-examination, Mr. Flautt?" the judge said.

Flautt asked Bob to clarify a few points about the statement he'd faxed, then focused on Wooten.

"Isn't it true that ... Terry Wooten never doubled up his fist and swung at you?" the prosecutor asked.

"He never swung at me, no," Bob said.

"Isn't it true that the most he did was place his hands on your chest and shove you?"

"Right," Bob answered. "That and poking me."

"I have no further questions, your Honor."

Bob sat there, stunned. He'd answered six questions. Little Bob had testified longer than he had. Why did the prosecutor want him off the stand so quickly? Was Flautt worried he was making points with the jury?

He didn't step down — he had so much more to say. Didn't they understand that his freedom was at stake? He'd waited so long to defend himself, he would have welcomed a grilling.

"Try and shake my story!" he wanted to shout.

He still hadn't moved. Jurors began coughing and clearing their throats.

Reluctantly, Bob abandoned the witness chair.

THERE WAS no trace evidence to sample, no DNA. There were no bullets to run through ballistics.

The case, when distilled to its essence, both lawyers argued, was about character. Who was more credible — the victim or the defendant? Who was lying and who was telling the truth?

In his closing, Flautt said the stories Bob's witnesses told had been a little too consistent. Their motives couldn't be trusted. They were out to help a father and a friend.

The prosecutor pointed to the shots of Wooten's face and told jurors exhibits 1, 2, 3, 4 and 5 were all the evidence they needed to convict Robert Kreischer.

"Maybe Terry Wooten asked for the first punch," Flautt said. "But he certainly didn't ask to be kicked in the head as he was laying on the ground."

Flautt told jurors 11 times that Bob had "brutally" and "repeatedly" kicked Wooten in the face and head. It was the crux of the state's case.

Bob's lawyer argued those same photographs would exonerate his client.

"He has gone to great lengths to attack ... our local sheriff's office saying they didn't do their job; they didn't go out and talk to these witnesses," Flautt fumed. "No, they didn't talk to them, but so what?"

"You're to decide this case on what the witnesses told you," Flautt told jurors. "You're to review their credibility and believability and decide it on that and that alone, not on whether or not you feel the sheriff's office did or did not do a good job investigating this."

One of the last images the jurors took with them as they filed out to make their decision was the prosecutor re-enacting an assault.

"When you're thinking about this, lay yourself out on the floor," he said. He bent deeply in front of the jury box and spread his long arms the length of a body.

"Think about somebody repeatedly kicking at you," said Flautt.

"We the jury find the defendant, Robert Kreischer, guilty ..."

Bob didn't believe it.

There were 12 people sitting there — they didn't *all* think he was guilty, did they? He searched their faces for a sign. No one would look him in the eye; they stared straight ahead, expressionless, or examined their feet.

Bob's lawyer asked the judge to poll the jury.

"All right," he said. "I will ask Juror Number One, is this your verdict?"

"Yes," said a woman.

As each answered, Bob felt the impossible sensation of his heart taking a swan dive into his stomach.

The four women and eight men had to pass Bob on their way out. He glared, willing them to meet his cobalt gaze. He could hear Mary sobbing behind him.

"I cannot believe this," he said, out loud. A few hunched over as they passed him, as if to avoid the rain.

The consensus was clear: Bob had every opportunity in the world to walk away — and he didn't.

"Some people's got such a temper on 'em — don't know when to quit," the minister's daughter said. "That sounds like the way he was — and he was *drunk*," she added with distaste.

That didn't bother one of the men. "Now, I don't have anything against drinkin'," he said, chuckling. "But if he hadn't been drinkin', he wouldn't have gotten so mad."

The retiree who was hard of hearing thought Bob had kicked Wooten, too, but that was no crime. Didn't these people know all was fair in a round-house brawl?

"When you pop someone, you don't just hit him once — you keep hittin' him. Otherwise, they could jump back up and hit *you*," he said.

None of the jurors had been swayed by that argument during their deliber-

“One of the last images the jurors took with them as they filed out to make their decision was the prosecutor re-enacting an assault ... delivering a hail of blows to an imaginary victim on the ground.”

"Look at the pictures," Miller urged.

If Wooten had curled up or thrown his arms over his head to ward off Bob's kicks, why were none of his extremities cut and bruised?

The minor scratches in the photographs happened when Wooten fell into a pile of brush, he said.

Miller pointed out that Wooten's witness was hardly impartial. Batross had dated Wooten's stepdaughter for a while. He still worked with Wooten's wife at a jewelry store in Columbus.

"The police investigation, what was done?" the attorney asked. "In all these months that have gone by" nobody from the sheriff's office or the prosecutor's office talked to all the eyewitnesses to the crime.

"Why? Apparently they didn't care enough. They have someone who's hurt. They have pictures of an injury. ... They can argue that Bob Kreischer's guilty whether he is or not."

It was the government's responsibility to build a solid case against Bob and it hadn't, the attorney said.

"This whole case develops because everyone involved in it says, 'Terry Wooten said it, it has to be true.'"

Flautt's rebuttal began as an angry defense of the county's police work.

Bob watched as the prosecutor delivered a hail of blows to an imaginary victim on the ground.

AT 5:13 p.m. Judge Lewis sent jurors into deliberations without a dinner break. That worried Bob. What if they didn't take their time because their stomachs were rumbling? he asked Mary.

Bob and his wife sat outside in the hall, jammed hip to hip on a narrow wooden pew.

Little Bob slipped downstairs to find the pop machines. He told his mother he didn't want to be in the courtroom when the decision came down. Mary didn't argue.

Ponsart and Wojcik were so convinced Bob would be acquitted, they'd gone back to the cabin to throw some steaks on the grill.

Then the jury was back. Had they even been out an hour? As Bob took his place next to his lawyer, he tried to decide if the quick deliberations were a good sign — or a bad one.

The foreman handed the clerk of courts the verdict.

Bob stood.

Bob turned to his lawyer. "You're through," he said in a hoarse whisper.

Mary came to the wooden bar separating the defendant's table from the spectators' gallery. He leaned over the railing and gave her a quick, awkward hug.

"Bye," he said as the deputies cuffed his wrists.

The jurors clattered down the marble stairs, their voices filling the ground floor hallway. They didn't notice the slight 15-year-old.

"My husband would've done the same thing," Little Bob heard one of the women say. "He would've punched the guy, too."

"Yeah," said another, "if only he wouldn't have kicked him so many times ..."

THE JURORS later would say it came down to the pictures, the only evidence they could hold in their hands, worth a thousand of Bob's words.

"It had to be one hell of a punch to do that much damage," said one, a former prison guard. They all agreed: Wooten looked really messed up.

ations. Some of the women didn't think a man should hit anybody for any reason. So the old man had dropped it. He went along with everybody else.

One juror had a son who was a police officer. He'd worked as a deputy for the Perry County Sheriff's Office until about a year before the trial. The defense attorney spent an awful lot of time blaming the sheriff's men, saying they hadn't done their job, she said.

She was more inclined to believe Joe Flautt. The prosecutor was a good man, her son had said so. That's why she trusted him. She'd known Joe's daddy, too; she'd been a juror on a case the senior Flautt had tried years earlier.

Some of them thought the penalty was pretty steep — two to eight years in prison. Seems like they read in the newspaper every day about people who did worse and got less time. They couldn't worry about that — it wasn't their job to sentence Bob. That was up to the judge.

"We're all accountable for our actions," the banker said. "We all make mistakes. We regret them, but we can't take them back."

A few felt sorry for Bob, especially the man who'd worked in prisons all his life. Kreischer had made a mistake, that

was for sure — he had seriously hurt somebody. But Bob had a wife and little kids. The guard had children and dozens of grandchildren himself and knew only too well that when Bob went away, it would be the people he loved who suffered the most. It was true what they said — when a man did time, his family did time right along with him.

IN THE BELLY of the Perry County Jail, Bob Kreischer paced like a lover betrayed.

One hour. Two. Three. Four. He never sat down, asked for a drink of water or used the toilet. He was buried down here and Wooten was up there, breathing in the crisp January air, probably celebrating.

On the floor above him, Mary tried to focus her red, bleary eyes on the numbers in the phone book as she shopped The Yellow Pages for a bondsman. Ponsart drove his pickup around town in search of an ATM. They weren't prepared for this and needed to scrounge up \$2,500 in cash — no check, credit cards or partial payments — to pay for Bob's release.

It was after midnight when Mary finally bailed her husband out of jail. It was so late, they drove back to the cabin. They'd head home to Leroy Township in the morning. But the events of the day kept them awake, restless and talking. Around 3 a.m., they gave up. They roused their son, his body heavy with sleep, and walked him outside. He stretched out in the back seat of the Blazer. Mary rode shotgun.

Bob started the engine and got the hell out of God's country.

BOB SPENT the two months before his sentencing gathering ammo.

He had a new lawyer, Barry Wilford, from Columbus. Wilford, a trial attorney with 22 years of experience, was supposed to work miracles. His firm specialized in appeals.

Bob's boss had generously taken over the legal bills. Don't worry, he'd told Bob. Pay me back whenever you can.

And Bob had the police report — with the deputy's notes and the statement Wooten wrote the night of the fight. It had taken one phone call to the sheriff's office the week after his conviction to unearth it.

Now that he'd been found guilty, the prosecutor had approved the release of the records. The sergeant had been happy to fax them to Bob.

They confirmed what he'd always suspected: Wooten never told deputies



Bob's case was hardly the most sensational tried before Perry County Common Pleas Judge Linton Lewis. Years ago, Lewis presided over Ohio's controversial school funding case, and drew raves and recriminations when he ruled that the way the state paid for the education of its children was unconstitutional.

he'd been kicked in the head, the throat, the face.

Wooten had been able to recall a number of specific details about the incident — he'd jotted down the date and noted that their argument had started precisely at 6:45 p.m. — but not that he'd been walloped in the skull with a boot?

Bob was seized with the sudden desire to mail copies of the statement to all the jurors. But what if he got in trouble for contacting them? He didn't want to anger the judge. Instead, he gave everything to his new attorney, who was guarded about how useful the new evidence would be at sentencing. Taking on the case after his client had been found guilty put him at a disadvantage; he likened it to a firefighter walking into a burning house to rescue the occupants after the roof had caved in.

At the sentencing hearing in early March 2001, in that funeral parlor gone to seed, Bob watched Judge Lewis. What was the man thinking? Was he impassive or just bored? Bob couldn't tell.

He wondered if Lewis had read any of the 80 letters of support sent to the Perry County Courthouse on his behalf. Most of them sounded like the one written by Karen McCarthy, one of Mary's best friends since high school.

I believe that there are two kinds of people in the world, "givers" and "takers." Bob is a giver.

Terry Wooten slid into the seat near the judge's bench. He looked small against its high back. He was there to describe how much his injuries had cost him.

"Your Honor ... I've gone through a lot of surgery with my eyes on this problem that occurred in this attack, and a loss of the left eyesight. It's been corrected to a certain degree.

"I go in tomorrow morning at 6:30 a.m. for another eye surgery to correct it a little bit better. If I can't get it corrected, I will lose my job at the United States Postal Service. They're going to give me six or eight weeks to have this taken care of where I can read the mail ... If not ... I'll be without a job."

It was true: Wooten was to have eye surgery the next day. But according to records Wooten later provided the court, the procedure was for his right eye, not his left. It was the left eye that Bob had punched. The left eye the ER report confirmed had been injured.

The scheduled operation was to remove a cataract, a malady most often caused by aging. Eye surgeons tell patients to expect a short recovery time — two to three days on average, a week at most. If Wooten had any other surgeries that day, they were not listed on the documents he submitted to the court.

If anyone else in the courtroom knew this at the time, they didn't speak up.

Wooten also told the judge he'd had bad headaches since the attack and that he'd incurred more than \$20,000 in medical bills.

His wife no longer felt safe visiting their trailer in the New Lexington woods, he said, knowing Bob's "out running around."

"Every time we hear a gunshot go off, she looks over her shoulder and so do I."

Bob, he told the judge, belonged in prison.

"I strongly want to see some time served on this," he said. "I — I think it's that serious. ..."

"Anything further?" the judge asked. "That's it, sir."

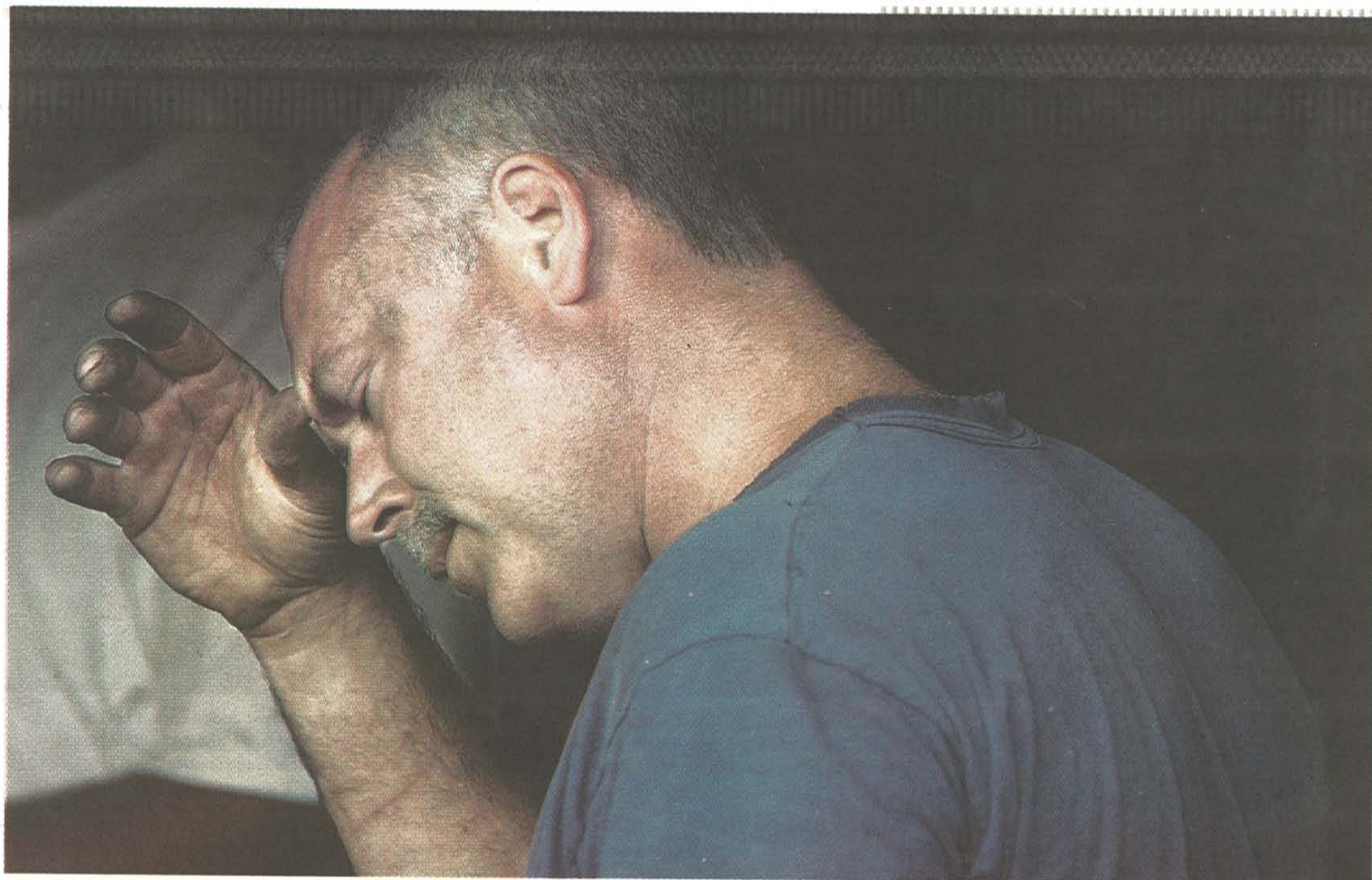
Bob's lawyer started earning his money immediately. He asked that Wooten's statement to the Perry County deputy be entered into evidence. Now it was on the record. If Judge Lewis didn't think it was significant, maybe an appeals court would see it differently.

Wilford also ripped into the pre-sentence report — a court-ordered investigation into Bob's background.

The report warned that Bob had "demonstrated a pattern of drug or alcohol abuse," making him more likely to commit similar crimes in the future.

Where was the evidence that supported that clinical diagnosis? Bob's lawyer asked.

It had been Wooten's word alone at trial, said Wilford, that painted Bob as a



Trains shrieked by Bob's job site with dogged regularity, competing for sonic dominance with a squawking walkie-talkie hitched to his hip. It was background music scored to his sweat. He'd miss those sounds.

quarrelsome drunk prone to taking swipes at neighbors.

None of Bob's friends, family or co-workers, after knowing him for decades, could remember seeing him drunk. He'd never been arrested for drunken driving, fighting in a bar or starting a whiskey-fueled screaming match with his wife.

Then there was the matter of his arthritis medication, Wilford told the judge. If Bob drank heavily, his joints would swell, making his job as a mechanic impossibly painful.

Still, there it was, in black and white — according to the pre-sentence report, Robert Kreischer had a drinking problem.

Bob couldn't see a copy of the report himself — or learn who'd been interviewed and what they'd said about him — because the judge had sealed it, a common practice to protect those providing information to the court.

The report also noted Bob's lack of remorse. That part was true. He wasn't sorry for what he'd done.

Bob had prepared a statement to

read to the judge: *Today is a very sad day for the American justice system, it began.*

... I now know that the truth no longer matters in this justice system. ... This Trial and persecution not only robbed me and my family of our life savings, taken food off our table and clothes off our backs, but has broken my will and my spirit ...

"You can't read that," his lawyer had told him.

Bob composed another and brought it with him to court: *... Your Honor, I stand here before you because an out of control neighbor decided that it was all right to come on to my property and harass my son and me. ... He gave me no other choice but to defend myself and hit him. ... [P]lease consider that you are sentencing an innocent man.*

No, his lawyer said, his patience wearing like a worry bead. It's still too strong.

When Bob finally addressed the court, the indignation and political speechifying was gone: *Your Honor, I think every day how I could have hand-*

led the situation differently. ... A prison sentence will ruin my family as well as me. I plead with you for mercy.

Bob had no criminal record, his lawyer explained. He'd held the same job and the same woman for nearly two decades. Place him on probation, the lawyer argued, not in a cell.

"I know the court has some discretion in this matter," Wilford said. He was right.

When Ohio legislators rewrote the state sentencing law in the late 1990s, they made it clear they wanted judges to send people who'd been convicted of high-level felonies to prison — unless there was some compelling reason not to.

Bob's law-abiding past, his stable employment history and loving family were pretty good reasons to give him a break, Wilford said. Plus, if the judge decided that Bob owed Wooten money, wouldn't the victim be paid off faster if Bob remained free and continued working?

"All right. All right," Judge Lewis said, moving the proceedings along.

Bob rose.

"The Court orders restitution in the amount of \$16,163.16," the judge said.

Bob felt as if he'd been hit in the gut. He had no idea how the judge had arrived at the number.

Wilford objected, saying Wooten's insurance company had already picked up \$7,000 of his medical bills.

The judge said he'd take it under consideration.

Bob exhaled. Maybe that was the worst of it. What really mattered was his family's welfare and his freedom.

Lewis went on to spell out his punishment:

Two years in prison.

Next Week: Bob Kreischer deals with the realities of conviction: Prison, appeals and life going on — without him.

Andrea Simakis is a staff writer for the Sunday Magazine. She may be reached at 216-999-5483 or through magmail@plains.com.