



WHEN JILLIAN  
GROH CHECKED  
IN TO THE  
DOWNTOWN  
WESTIN HOTEL  
ONE COLD NIGHT  
ALMOST SEVEN  
YEARS AGO,  
EVERYTHING  
FELT CERTAIN.  
THEN THINGS  
CHANGED  
FOREVER.

*fragile*

BY CHRIS OUTCALT

*illustrations by owen freeman*

**IN THE EARLY HOURS OF SUNDAY, MARCH 4, 2007, AN ELEVATOR DOOR ON THE 17TH FLOOR OF THE WESTIN DENVER DOWNTOWN PARTED WITH A DING. A SIX-FOOT-TWO, 260-POUND MAN DRESSED IN A BLACK SUIT STEPPED OUT. A NAMETAG PINNED NEAR HIS LAPEL IDENTIFIED HIM AS NATHAN ROBINSON, A WESTIN SECURITY GUARD. ROBINSON HEARD A NOISE IN THE OTHERWISE QUIET HALLWAY. THE NOISE GREW LOUDER AS ROBINSON TRACED THE SOUND TO ROOM 1715.**

### *Heknocked.*

More than half of the 28 rooms on this particular floor were booked, yet no one had called the front desk to file a complaint. Still, Robinson was certain he had heard muffled voices as he patrolled the 19th floor. Robinson would later say he had “heard every voice” in the room, from two floors above.

On the other side of the door was a group of women and men in their early 20s, some lounging on the floor, others sprawled upon the tightly tucked sheets and blankets covering the room’s two double beds. They hadn’t been there long, maybe 30 minutes. Hours earlier, three of the women had checked in to the Westin before leaving to hit the bars in LoDo. One of them, Jillian Groh, had recently learned she’d made the Colorado Rapids cheerleading squad, and the friends were celebrating. During the night, they met up with a few of their guy friends. They all drank until the bars closed and then made their way to the Westin.

When they heard the knock, Jill, who had a mop of curly, bleached-blond hair, answered the door. Robinson would later tell a police officer he asked her to step out of the room. He said everyone needed to quiet down, and if he had to warn them again, they would face eviction. Jill responded that they’d all watch their volume—no problem. Since she’d been a little girl, Jill’s family and friends had always told her she had a warm smile, but Jill’s demeanor when she spoke to Robinson did nothing to put the guard at ease. Instead, it was almost as if her poise angered him.

Robinson pushed past Jill into the middle of the room. He told everyone to calm down before they disturbed other guests. Robinson’s actions might have startled anyone, but Jill had studied hospitality management in college and would have known the man’s behavior was inappropriate. She asked to speak to a manager. In response, according to court documents, Robinson threatened eviction for a second time. More than one person in the room got the impression Robinson enjoyed the confrontation.

Robinson called for assistance. A second security guard, and then the manager on duty, arrived. Though their presence was meant to help diffuse the tense situation, it only escalated things. One of the girls in the room said the second guard asked to see identification, and when he saw she was from Arizona, he said, “Well, welcome to Denver.... Now get the fuck out.” The guards later said they proposed a deal: Jill and her girlfriends would stay, and everyone else would leave. But the guests said they were told “Time’s up” and “You’re out of here.” The girls gathered their things, and everyone headed to the

lobby. One of Jill’s friends unsuccessfully pleaded with hotel staff to let them all stay. “What do you want us to do? Where do you want us to go?”

We’re all drunk.”

The group passed a Denver Police officer in the hallway. No one spoke to the officer. Moments later, in the lobby, the group encountered a second police officer, and this time one of the guys walked up to him and asked, “Are you here for us?” Westin staff had requested an officer be dispatched to the hotel, but for a separate incident—a drunken girl who fell in the lobby. The officer said he wasn’t there for them.

Jill fumbled for her phone and called her older brother, George, in Arizona. Jill’s sister, Jennifer, works for Starwood Hotels & Resorts Worldwide, the Westin’s parent company. (Jill’s brother also works for the company.) Jennifer had used her employee discount to book Jill’s room. When George called back a minute later, Jill cried and rambled into the phone.

*We’ve all been out partying. We came back to the hotel. Everybody’s drunk. They’re kicking us out. Jen’s going to get in big trouble.*

“Jillian, Jennifer’s not going to lose her job,” George said, attempting to calm his sister. “Just relax.”

*I have to go,* Jill said, still crying as she hung up.

The group walked out of the Westin around 3:15 a.m. One of the guys looked around for a taxi, and then turned back to Robinson, who was standing near the hotel doorway, his arms folded across his chest. “Hey man, it’s freezing out here. Can we wait in the lobby while we get a cab?”

“No,” Robinson said. “Get the fuck out of here.”

Standing near the Westin’s front entrance, Robinson watched the group walk toward the underground parking garage next to the hotel.

**O**N ANY GIVEN NIGHT, Black Hawk’s casinos are filled with people betting on chance, hoping the random flip of a card or twirl of a roulette wheel might produce a bit of good fortune.

Black Hawk was in the rearview mirror of Sun Chon’s Acura MDX as she drove east on the early morning of March 4, 2007. Chon navigated the tight turns on her way home to the Denver area. Sometime before 4 a.m., some 45 miles after leaving Black Hawk, Chon exited I-25 south and merged onto I-225. Less than a mile later she felt a bump beneath the car. The jolt compelled her to pull over. Chon inspected the vehicle: One of the tires was flat. She called a family friend for help.

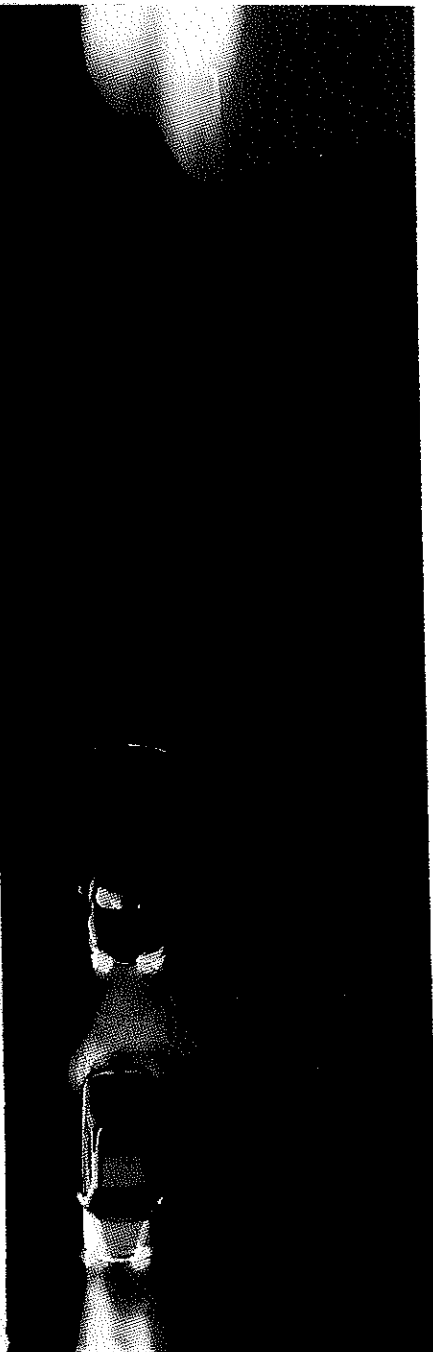
Not long after he got the call, Hun Choi showed up in his Ford Expedition. Beneath the glow of a streetlight, he attempted unsuccessfully to fix the flat. Figuring it was best to get off the highway, Choi decided he would drive the disabled car to the next exit and then take stock of the situation. The exit for South Parker Road was only a few miles away. To be safe, he would drive the Acura and have Chon follow in his SUV. They both pulled back onto the highway close to 4 a.m. Their hazard lights pulsed into the night as they made their way toward the exit at about 15 miles per hour. It seemed as if they were the only ones on the road.

JILL TOSSSED THE KEYS to her silver PT Cruiser to Angela Reed, a friend from college. The group decided to head back to Jill's apartment not far from the Denver Tech Center. Seven people piled into the car: Angela got into the driver's seat, and Jill and three others crammed in the back. Jill's roommate, Jacquelyn Paisal, sat on the lap of one of the guys in the passenger seat. No one clicked on a seatbelt.

Angela maneuvered out of the garage, drove past a cabstand along Lawrence Street half a block north of the 16th Street Mall, and ended up on I-25. The car was quiet. Angela glanced in the rearview mirror as she drove. She saw Jill flirting with one of the guys in the back—a guy Angela had been involved with. Angela continued to steal glances as she exited the southbound lanes of I-25 and eventually got on I-225 north. The car was traveling at least 60 miles per hour when Jacquelyn noticed what looked like brake lights in the distance. They approached so quickly it was almost as if the car was parked in the right lane. "Angela," Jacquelyn said. "Are you going to stop?"

**B**ILL AND JANELLE GROH met at Arizona State University in 1969. Janelle was born in Nebraska. Her family later moved to Colorado, and she attended Lakewood High School, in the shadow of the Rocky Mountains. Bill grew up in Iowa. He joined the Air Force out of high school, and while he was enlisted, his family moved to Arizona. It's easy to miss someone among thousands of students on a college campus, but Bill didn't miss Janelle; he was drawn to her the moment he saw her. Bill asked a mutual friend to arrange a date. Janelle smiles when she tells the story, all these years later, about how they went dancing at a nearby hotel lounge.

As a fraternity brother in his Arizona State days, Bill would often stay up all night. But as a father he developed an early-to-bed, early-to-rise routine, so it was no surprise that on Sunday, March 4, 2007, he was up before 6 a.m. He drove, as he often did, to the 24-hour Walmart down the road from the Grohs' home in Fountain Hills, Arizona, a modest, cookie-cutter town in the hills east of Phoenix. During these frequent morning trips, Bill would shop for miscellaneous things—bananas, a box of Clif bars, maybe even a new button-down shirt.



Bill headed home when he was done with his morning shopping. He pulled onto his street and noticed there wasn't a single car parked along the side of the road. Bill turned into the driveway and unloaded a couple of bags of groceries. Out of the corner of his eye, he saw what looked like two police cars, black sedans with gold trim. Bill wondered why the cops were in the neighborhood. The Grohs lived on a good block; there weren't many bad blocks in Fountain Hills. The cars moved deliberately down the road and stopped in front of the Groh house, a few feet from Bill. A police officer climbed out of one of the cars and asked: "Are you William Groh?"

**T**HE YOUNGEST OF THREE, Jill was a lively kid. Though she was born in Austin, Texas, the family moved to Arizona before her 12th birthday. Jill took an interest in cheerleading at an early age. Cheerleading ran in the family, and Bill's little Jilly Bean, as the family called her, had the lungs for it. "Even in fourth grade," he says, "she was the loudest cheerleader."

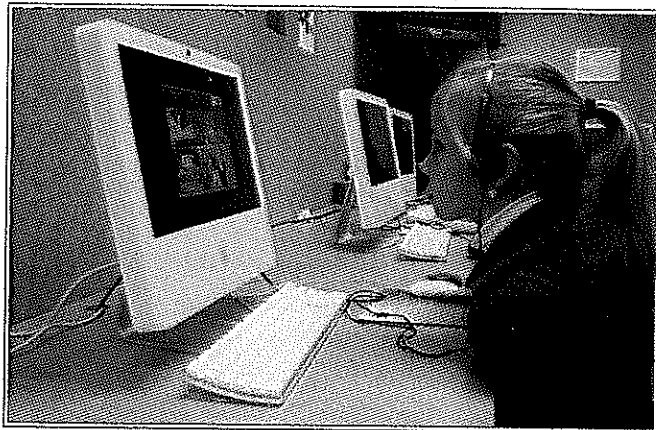
In high school, Jill was a straight-A student and was president of her senior class. She captained the cheerleading squad and was a star on the softball team. Jill still found time to volunteer in the community, helping raise money for multiple sclerosis research and delivering anti-drug messages at local elementary schools. Jill's skills on the softball diamond earned her a scholarship at a small college in Oklahoma. After a year, though, she left to attend Northern Arizona University (NAU), a two-hour drive from Fountain Hills. She entered the hospitality management program, which seemed like a good fit for Jill's easy temperament. Working in the hotel industry had also become something of a family profession.

Jill arrived on the NAU campus in the fall of 2003 and immediately made an impact on those around her. She captained the cheerleading squad and helped with community events. "Everybody loved her," says one of Jill's former NAU professors, Frances Ann Hill. "There is a spontaneous affection for Jillian everywhere." One particular moment stands out in Hill's mind. Every semester for nine years, Hill had taught a hospitality leadership course. At the end of the course, she required students to present a personal mission statement—a snapshot of who they are and what they've learned during the semester. On a spring day in 2005, Jill walked into class to present her statement. When it was her turn, instead of talking about herself, Jill named each of her fellow cheerleaders and spoke about their strengths and what she had learned from them. "It was beautiful," Hill says, "how she made her personal mission statement a reflection of all the gifts that they had given her."

Because NAU is known for its hospitality program, each spring recruiters from many of the major hotels arrive on campus in search of new employees. The Hyatt approached Jill her senior year with a job offer. She accepted. There was no location

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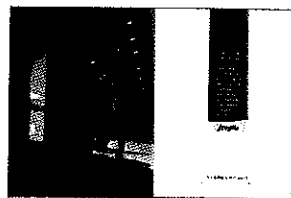
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CONTINUED FROM PAGE 91

attached to the deal; the Hyatt could assign Jill to any of its more than 500 properties around the country—something of a game of roulette. Not long after she took the job, Jill learned she would start her career in Denver.

JILL MOVED TO the Mile High City in the spring of 2006. Despite Denver being where Janelle attended high school, the Grohs were uneasy about their daughter's new home. Jill had recently ended a long relationship with a Broncos recruit, and Bill and Janelle were worried her ex-boyfriend would be a distraction.

Jill left the snow-covered peaks of the Front Range in December 2006 to travel home for the holidays. She told her father she felt stifled at her new job. Bill encouraged his daughter to stick it out in Denver for at least a year, enough time to give this chapter of her life a chance to take shape.

When she returned to Denver and the calendar flipped to the new year, things turned for Jill. She was promoted at the Hyatt. Jill also learned the Colorado Rapids were holding tryouts for the team's cheerleading squad; she thought she would give it a shot. Toward the end of February, Jill heard she had made the squad. "Jillian was just beside herself with joy," Janelle says. Jill and her roommate, Jacquelyn, signed a new lease on a two-bedroom apartment, cementing their place in Denver for another year.

To mark the occasion, Jill invited a friend from Arizona to celebrate. Jill's sister booked them a room at the Westin on the corner of 17th and Lawrence streets for \$49. On that night in March, Jill called her parents to say she was going out with friends. At moments like this, Bill and Janelle were particularly proud of their youngest daughter, pleased she had stuck it out in Denver. But parents being parents, they'd also talked to her about being safe that night. "We've got a room at the Westin," Jill said. "We'll be fine, Dad."

**AT THE VERY MOMENT** the police officer informed Bill his daughter had been in an accident, doctors were operating on Jill almost 850 miles away in an Aurora emergency room. The Grohs felt numb. Their son, George, put them on the next plane to Denver, and within a few hours of hearing the

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### LIFE BEFORE

Jillian with her mother and father in 2001, Jill's senior year of high school

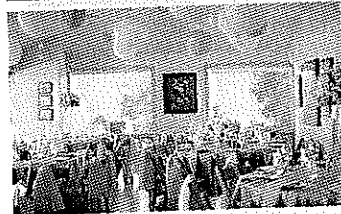
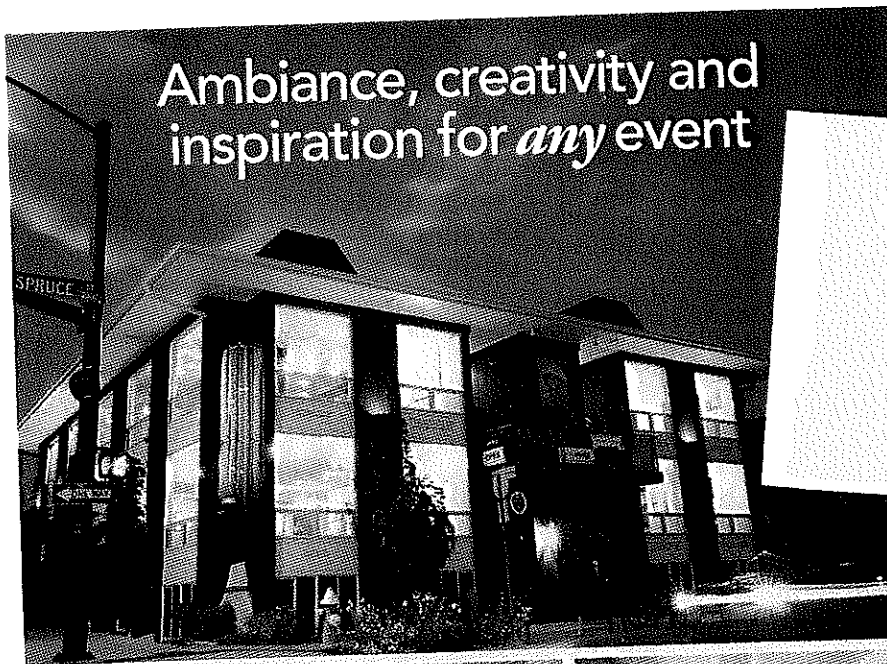
news, Bill and Janelle walked into the Aurora Medical Center. What faced them was the kind of scene parents' nightmares are made of: Jill was in a hospital bed, bandaged from head to toe, her eyes shut. As bad as it looked, the Grohs couldn't see the worst of it. Doctors had removed part of Jill's skull due to the swelling in her brain. She was battling for her life.

The accident happened at 3:59 a.m. In the fraction of time before impact, according to a police report, Angela Reed had swerved into the slow-moving Expedition instead of away from it. The PT Cruiser's low front end smashed underneath the SUV's rear bumper, which increased the severity of the crash. One of the backseat passengers, Michael Martin, was thrown into the back of the driver's seat; his body left an indentation that was still visible days later. The site of the accident was a mess of blood and shattered metal. When emergency crews arrived, they had to remove the Cruiser's passenger side door.

No one died at the scene, but all seven passengers in the Cruiser and Chon, the driver of the SUV, were transported to the hospital. Jill and Michael were the only two who wouldn't eventually walk away. (The Martins were told Michael's skull collided with Jill's during the wreck.) Michael's parents were on a business trip in Ohio when they got the news. Hours later, Michael's mother found her way to Denver. Her son was on life support. After 10 days, though, doctors told the Martin family there was no hope. The family switched off the machines.

Blood samples were taken from everyone to determine their alcohol levels at the time of the crash. The subsequent toxicology reports estimated that Angela's BAC was 0.22—nearly three times the legal limit. Angela eventually pleaded guilty to driving under the influence, criminally negligent homicide, vehicular assault, and two counts of careless driving resulting in death or in-

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jury. The Grohs decided to testify on Angela's behalf at her sentencing hearing, which occurred about a year after the accident; they thought Jill wouldn't want Angela to do any jail time. In part because of the Grohs' recommendation, the judge sentenced Angela to years of probation and hundreds of hours of community service.

The Grohs slept in the hospital lobby those first few days. They had a room at a nearby Sheraton but didn't want to leave Jill. Despite Jill's life-threatening injuries, the Grohs couldn't help but think their

daughter would pull through. "I just expected that they'd operate on Jill and in a couple of weeks we'd be going home," Janelle says.

There were countless surgeries. After Jill's first craniotomy, fluid continued to pool in her brain and doctors had to operate again. Doctors placed Jill in a medically induced coma. One of Jill's lungs collapsed; a tube helped her breathe. She could no longer swallow, so doctors put a feeding tube in her stomach.

Whenever the Grohs asked about their daughter's condition, the answer was the

same: *She's in the ICU. We can't answer that now. We should know more in two to three days.* If the doctors said more, Bill and Janelle didn't—or maybe couldn't—hear it. To help keep track of it all, Janelle would ask family and friends to take notes whenever a doctor was in the room. Janelle focused her energy elsewhere: She shaved Jill's legs, clipped her toenails, massaged her muscles, and stretched her limbs.

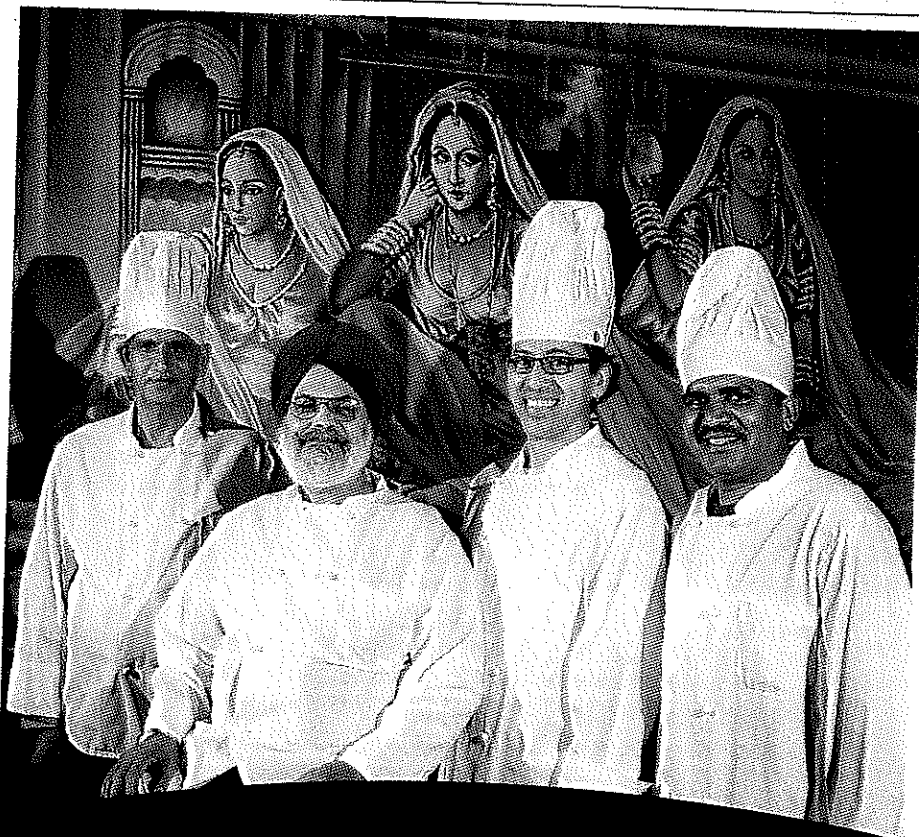
When doctors finally took the bandages off of Jill's head, her scalp was an unrecognizable mess of bloody patches and knots of hair. They asked Janelle if they could shave Jill's head. Janelle wondered why they hadn't already. About a month after the accident, doctors decided it was safe to let Jill out of the coma. Janelle remembers a nurse shining a small flashlight into her daughter's open eyes. Nothing.

The Grohs counted each of the 84 days Jill spent in the ICU. One day toward the end of their three months in Aurora, Bill walked across the street from the hospital to get lunch. It was raining. By the time he got back, the bread was soaked, the sandwich ruined. Bill thought to himself things couldn't get worse.

Finally, doctors considered Jill stable enough to be transported to a facility near the Grohs' home in Arizona. The day they were set to leave, one of Jill's physicians pulled Bill and Janelle aside. For the first time, he explained the phrase "traumatic brain injury." He told them Jill would never be able to care for herself again.

**ONE OF THE FIRST** things George, Jill's brother, did when he heard about the accident was call the Westin. He wanted to know what had transpired at the hotel. He had one question in particular: "Why would someone kick drunk kids out into the street at 3 a.m.?"

George eventually spoke to the Westin's security director, who said a police officer had escorted his sister and her friends out of the hotel. George then spoke to the officer. Denver Police sergeant Bryan O'Neill was shocked when George explained what had happened to his sister. O'Neill recounted being called to the hotel that night to take care of a drunk girl who had fallen in the lobby, but he was surprised to hear the girl had climbed into a car. He asked George to describe his sister's appearance. When he heard the description, his mind flashed to a group of kids in the lobby, and the man who asked him, "Are you here for us?" O'Neill told George he played no part in evicting George's sister. O'Neill would later say in a deposition that no one from the Westin asked him to remove the Groh group,



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FIRST FEW DAYS.  
THEY HAD A  
ROOM AT A NEAR-  
BY SHERATON BUT  
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LEAVE JILL.**

and that Denver Police logs indicate nothing about an eviction at the Westin in the early hours of March 4, 2007.

A few days after the crash, an attorney showed up at the Westin. Though he wasn't there on behalf of the Grohs, the lawyer said someone who had been in an accident after leaving the hotel had retained him as counsel. He requested certain security tapes from that March night be preserved. This visit—and George's phone call—indicated to Westin personnel that litigation against the hotel was looming. In response, Westin management reviewed security logs from that evening and traded emails about what had happened. Days after the accident, the general manager of the Westin, Thomas Curley, relayed to a company lawyer what he had learned: "We received a phone call from the brother of the registered guest stating that he was going to seek legal action. He was asking why we evicted the party and why we put seven intoxicated people in a car. Our security director spoke with him and informed him that Denver Police were involved and that as far as we knew there was no indication of intoxication during the eviction process."

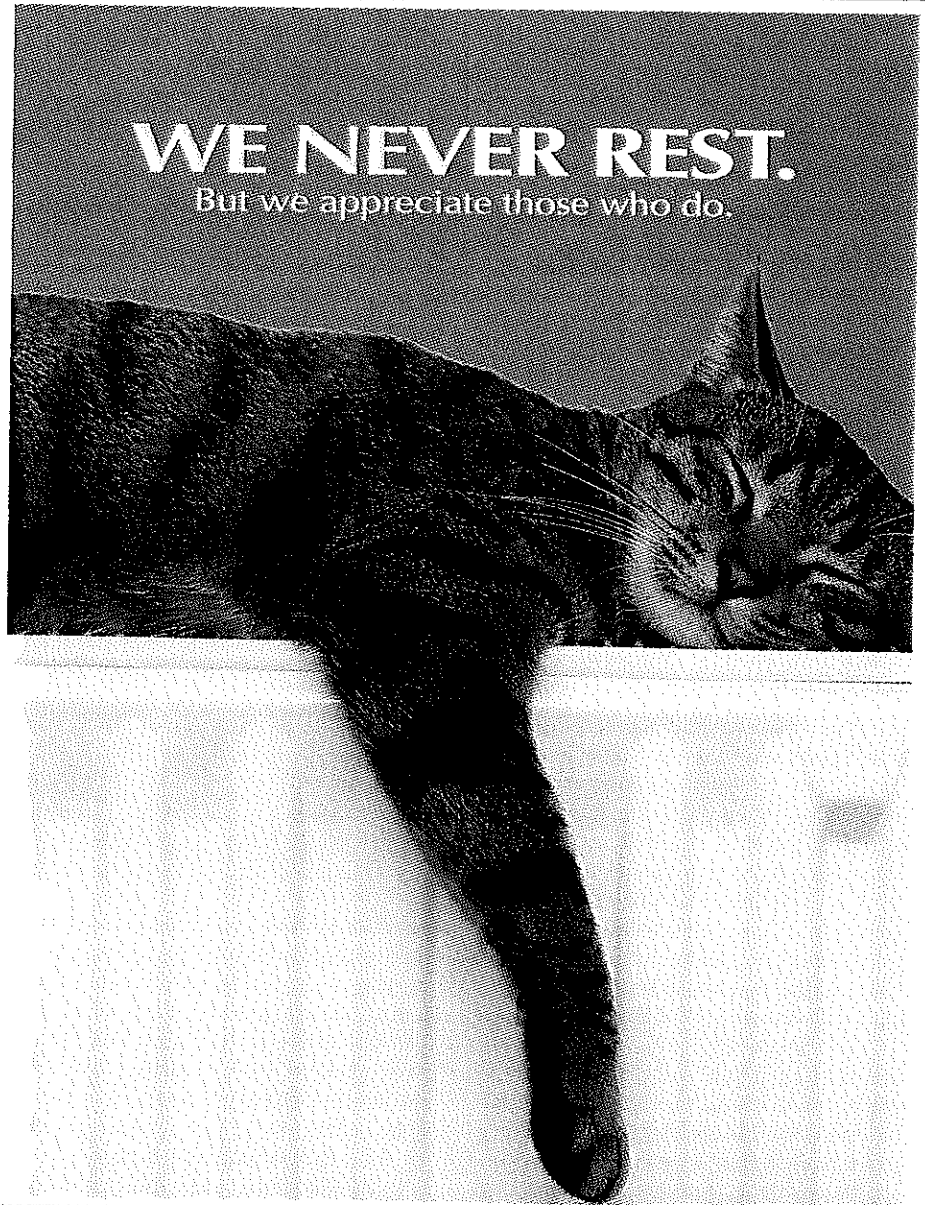
George called Janelle's brother-in-law, a well-connected real estate developer in Portland, Oregon, hoping he could recommend a good lawyer. The Grohs eventually got in touch with Alan Shafner, an attorney who, at the time, worked at Fogel, Keating, Wagner, Polidori & Shafner, P.C. in Denver. The firm held a meeting about whether to take the Groh case, and though many of the partners were undecided, Shafner advocated for it. The firm agreed to work the case on contingency. "You get a hunch and you think things will turn out," Shafner says. "I thought the facts would turn into a good case."

**THE VIEW FROM** Alan Shafner's office, a few miles from the accident site, is quintessential Colorado. The Rockies sit in the distance, a bit fuzzy, almost as if they have been painted onto the landscape. Shafner spent his childhood gazing at views like this; he was born and raised in Denver and attended college at the University of Colorado Boulder. He went on to the South Texas College of Law in Houston. After graduation he came back to Colorado and landed a job at the First Judicial District Attorney's Office in Jefferson County prosecuting felony

cases. Shafner moved to Fogel, Keating, and Wagner in 1983 as an associate and would spend 28 years with the firm, eventually being named partner.

As Shafner researched the Groh case, a few things quickly became clear. The first was that, as far as he could tell, the Westin had not followed its own policies when evicting Jill and her friends. Security guards are supposed to refrain from "entering a guest room without proper authorization," and according to a Starwood best practices manual, hotel employees should attempt

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to prevent intoxicated guests from driving. Shafner learned that not more than a few months before the Groh incident, the second Westin security guard involved that night, John Dale, had diffused a situation with an NHL hockey team, the San Jose Sharks, by moving the team to an empty part of the hotel where noise wouldn't bother other guests. The hotel commended Dale for his action.

If a guest is drunk—and Jill's friends say they told security they were—hotel staff is supposed to involve the Denver Police in the eviction process, according to court documents, to ensure everyone's safety. And although there were two police officers at the hotel that night, both would later testify they weren't asked to help with the Groh group. Furthermore, the manager on duty that night later stated, regarding intoxicated guests, "We take responsibility for cabs even if they are thrown out. We're willing to pay for the cabs if they want to, you know, if they want to go home."

Shafner also investigated the employees themselves. In his first month on the job, Robinson—the guard who knocked on the door of room 1715—had been accused of sexual harassment and had argued with co-workers. In fact, just minutes before he encountered Jill and her friends, Robinson had an altercation with VIP guests on the 19th floor. During the argument, one of the VIPs yelled, "You're fucking scaring off my friend." When the incidents occurred, Robinson was on a 90-day probationary employment period; the Westin didn't renew his contract after those three months.

The second security guard, Dale, had recommended that the Westin hire Robinson. The two worked out at the same gym in Aurora. Dale would later say in a deposition he had thought Robinson would be good for the job because, "In our conversations, you know, he was soft-spoken.... He had some experience in security, and he was looking for a job."

Dale had a lengthy resumé with a focus on security and law enforcement. He also had a rap sheet and says that in his 20s he was diagnosed with paranoid schizophrenia and bipolar disorder. In 2002, Dale was charged with criminally impersonating a peace officer. He cut a deal and pleaded guilty to official misconduct. Two years after that incident, Dale's sister filed for a restraining order against him. As evidence to support her request, she described one particular incident: "John and I were disagreeing. He leapt up from where he was sitting and got in my face while telling my father, 'You'd better call the cops, Dad, 'cause I'm gonna kill her.'" An Arapahoe County court judge granted Dale's sister a civil protection order. Dale says he told the Westin about both the

restraining order and the misconduct charge during his interview for a security position.

The manager on duty in the early morning of March 4, 2007, Mario Maradiaga, had multiple assault charges and had also been charged with disturbing the peace. Six months after the Groh incident, Denver Police officer Keith Lewis wrote an affidavit for a warrant for Maradiaga's arrest: "Mario Maradiaga...and the complainant have been in an intimate relationship for 11 months. On this date, the defendant and the complainant were in an argument that turned physical with the defendant punching the complainant in the leg and pushing her out of the car by her neck."

Shafner grew more confident as he re-

searched the case. It was difficult to tell, he thought, if the Westin had set out to hire employees skilled in customer service or nightclub bouncers. What's more, Shafner couldn't seem to find any record of the Westin training these employees on how to determine if a guest was drunk or how to deal with a guest if he or she was intoxicated. "The lack of any evidence that key Westin personnel were trained on the Westin's policies and procedures for handling intoxicated guests is especially noteworthy," Shafner wrote in a court brief, "because the Westin Hotel requires that all training be documented in personnel files."

About a year after the accident, Shafner sued the Westin on behalf of the Groh



#### LIFE AFTER

Bill, Janelle, and Jillian Groh outside of their home in Scottsdale, Arizona, this past summer.





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family for, among other things, negligence, negligent eviction, and negligent hiring and training. Shafner also sued Sun Chon, the driver involved in the crash, and Angela Reed. (Although they testified on behalf of Reed, the Grohs felt she was no longer remorseful.) Those matters were eventually resolved, and the lawsuit against the Westin was all that remained. "We teach our kids from first grade: Get a place, be safe. That's the mantra," Shafner says. "These kids did what they're supposed to do. They got a hotel room. We're not saying you can't evict people. Just do it correctly."

**THREE WEEKS BEFORE** the Groh case was set to go to trial, and almost three and a half years after the accident, the Westin's lawyers filed a motion for "summary judgment," a tool designed to aid lawyers and judges in weeding cases with no legal standing out of the system. Summary judgment, also known as Rule 56, is written in a 149-page document called the Federal Rules of Civil Procedure, which governs the way the civil court system functions. The federal government adopted the rules in the 1930s, and similar versions have been co-opted by most states, including Colorado.

Rule 56 reads: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Put another way, summary judgment allows a judge to determine a case purely on its legal merit. There is no jury. "Summary judgment," says Scott Moss, an attorney and associate professor at the University of Colorado Law School who specializes in civil litigation, "in many cases is a trial on paper."

Judges tended to stay away from the motion when the rules were first adopted, worrying it could be construed as stripping citizens of their right to a jury trial. In 1986, though, the U.S. Supreme Court issued three opinions viewed by some as a turning point, "signaling a greater emphasis on summary judgment as a necessary means to respond to claims and defenses that lack sufficient factual support," according to the Federal Judicial Center, the education and research arm of the federal court system.

In the decades since the 1986 rulings, summary judgment has drawn national attention from legal scholars, retired judges, and attorneys. In 2007, Suja Thomas, a law professor at the University of Illinois, began a paper published in the *Virginia Law Review* with this declarative sentence: "Summary judgment is unconstitutional." Thomas argued the rule usurps citizens' constitutional rights. Then there are those

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who say there is a culture of summary judgment entrenched in our legal system, and attorneys routinely file the motion whether or not it's appropriate—anything to win a case without dealing with a jury. "Summary judgment is filed when it shouldn't be," says Diane King, a Denver lawyer at the firm King & Greisen. "There are hundreds of disputed facts, and it's filed anyway."

But some say judges handle summary judgment just as carefully today as when the rule was first adopted. "It's only used in those rare circumstances that nobody has an issue of fact," says former Denver District Court Judge Christina Habas, who reviewed

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countless Rule 56 motions in her nine years on the bench and now works for the Denver firm Keating Wagner Polidori Free. "It's very rarely granted for that reason."

The Westin's 41-page summary judgment motion argued the Grohs' "claims must fail as any 'negligence' on the part of the Westin with respect to the eviction was not the proximate cause of the accident nor the injuries suffered therein." In other words, the fact that Jill and her friends were kicked out of the hotel didn't cause their accident. The Westin's lawyer wrote, "It would be unconscionable to hold a hotel liable for such unforeseeable events."

The motion didn't surprise Shafner. But he was confident the Groh case wasn't a fit for Rule 56. Shafner drafted a response, which he filed with the court two months later. "A jury could most certainly find that Defendant Westin's breach of its duty was a proximate cause of Plaintiff's injuries and damages.... Further, if Westin personnel decide that it is necessary to evict guests from the premises, then the Westin has policies and procedures in place to ensure that the



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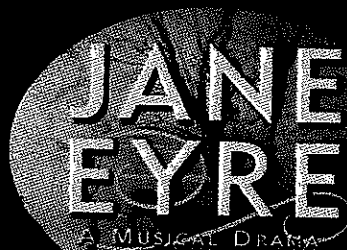


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eviction takes place so that its guests are not thrust into dangerous situations when they depart the premises."

Three and a half months after Shafner filed his response, and weeks before the latest trial date, which had been pushed back, Denver District Court Judge R. Michael Mullins rendered his decision. The judge sided with the Westin. There would be no jury. No trial.

Bill was sitting on the couch when the phone rang. When he heard the case wasn't going to trial, he felt as if he had been punched in the jaw. The Grohs would file an appeal, but the odds were against the case being overturned. Janelle was dumbfounded. "I never knew there was such a thing [as summary judgment]," Janelle says. "I thought everybody would get their day in court—let the jury decide one way or another. Jill has to have her little voice heard."

**THE SOUND BEGINS** as something of a whimper. Bill is lying on his back in the middle of the night when he hears it. A few moments pass. Then the whimper becomes a scream—jagged, piercing, broken. Bill jerks out of bed, cracks a Dr Pepper—the soda helps him shake himself awake late at night—and rushes down the hall to his daughter's room.

A few years after the accident, the Grohs decided to care for their daughter themselves at home. They eventually moved into a house in Scottsdale their son owned and fixed it up so it was wheelchair-friendly. Ever since, nearly every night has been like this: Bill waking in the dark to his daughter's groans and wails. The process has become disconcertingly normal.

He peers through the darkness. As with an infant, Bill does his best to quickly decipher why Jill is screaming. He checks to see if she needs to be changed, or if she's trying to bite herself—a tendency that has left scars on the top of her left hand. Sometimes all Bill can do is dab the spit from the corner of his daughter's mouth with a washcloth and sit with her, hoping his presence eases her pain.

No one in the Groh house sleeps more than five consecutive hours. Typically Bill takes the night shift and Janelle takes the morning shift. Jill still isn't responsive, but her eyes are often open, casting a blank stare. She no longer has control of the part of her brain that tells her muscles to relax. Her upper body looks as if it's tied in a knot. Her chin is pressed firmly against her left shoulder, and her arms are tucked tightly, each in the shape of a bird's wing. Like her arms, Jill's ankles are locked, her toes pointed inward. Doctors told the Grohs the

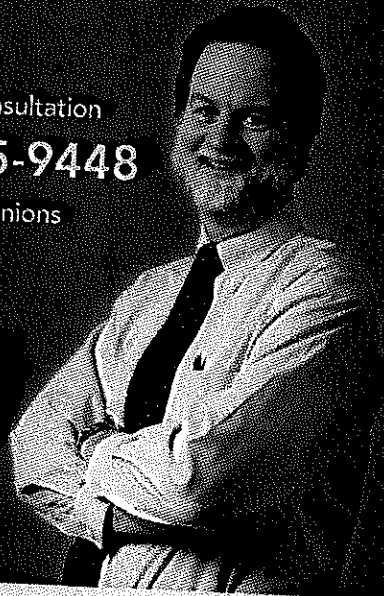


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only way they could "fix" Jill's feet would be to break her ankles and reset them in a natural position. Bill and Janelle decided there was no need.

The Grohs do everything for their daughter—feed her, change her, brush her teeth. Jill still has the feeding tube in her stomach. Three times a day, Janelle pours a bottle of a nutrient-dense liquid called Compleat into a large syringe and injects the liquid into the tube. There's a medicine pouch the size of a hockey puck underneath the skin near Jill's belly button, which dispenses medicine throughout her broken body. Once a week, Janelle takes Jill to a physical therapy appointment at which occupational therapists try to loosen Jill's body by stretching her limbs and placing Jill in a contraption that allows her to stand. Between insurance coverage and caring for Jill themselves, the Grohs have made things work financially, but it has been difficult. After the accident, Janelle went back to work a few days a week. The Grohs worry about what will happen when they're gone. Who will take care of Jill? How will the family afford to provide her with the type of support she needs?

Jill's room is a blend of her life before and after the accident. She sleeps in a hospital-type bed, and there are bottles of Compleat and stacks of absorbent briefs on a shelf in the corner. On a dresser underneath a TV, there are pictures of Jill from her cheerleading days and an "Award of Excellence" she received during her time at the Hyatt. When the Grohs need to move Jill from her room, they use a lifting machine and a series of harnesses to pick her up. She hangs heavy and helpless as they transport her to the couch in the living room or to her wheelchair. Though Jill may never be fully responsive, the Grohs say she has perked up since coming home. One day Janelle was talking to her daughter, and Jill let out what sounded to Janelle like a little laugh. It was the first time in years Janelle had heard Jill's voice.

Last summer, one of Jill's old high school friends had a bridal shower. The Grohs have a minivan that holds a wheelchair, making it possible to get Jill out of the house. Janelle dressed Jill up and took her to the party. Janelle was on Facebook a few days later and noticed the friends had posted pictures. Not one photo in the entire album included Jill. Bill and Janelle were crushed. "I can't look at Facebook," Janelle says. "It breaks my heart. I'm just too consumed with taking care of Jill, and our little life, our little routine. To think that Jill will never be married or have kids is just heartbreaking."

**THE GROHS LOST** their first appeal. The 2-1 ruling upheld the District Court judge's



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decision to grant the Westin summary judgment. Perhaps searching for a silver lining, Shafner was encouraged by the lengthy dissent written by one of the Court of Appeals justices. It was clear the judge believed the case contained questions for a jury. "I would hold that where an innkeeper evicts a guest under circumstances potentially creating an imminent risk to the guest, because of either the guest's condition or the environment into which the guest has been evicted—or, as here, the two in combination—the jury must decide whether the eviction was reasonable."

In the time since the Groh case was first filed, Shafner had opened his own firm not far from the Hyatt Regency Denver Tech Center where Jill used to work. Shafner had amassed enough paperwork—research, depositions, motions, expert opinions, and relevant cases—to fill a room in his office and part of a room at home. Though it was a long shot, the next legal step was to ask the Court of Appeals to reconsider. Cases are rarely overturned in this manner. Nevertheless, Shafner filed the paperwork.

Interestingly, in the time it had taken the appeals to progress, a judge announced his retirement. The justice was a member of the three-judge panel that first considered the Grohs' appeal. When Shafner's motion to reconsider showed up on the docket, the court assigned a new judge to the case. Shafner viewed the swap as fortuitous: Perhaps this new judge would side with the Grohs.

The news came in late March 2013, 24 days after the sixth anniversary of Jill's accident. The Court of Appeals reversed its decision; this time, it was 2-1 in favor of the Grohs. The judges saw the case as potentially having far-reaching implications in Colorado and beyond. The majority opinion stated: "This personal injury action presents an issue of first impression in Colorado: whether a hotel's duty of care to a guest requires that, in lawfully evicting the guest, the hotel act reasonably. We conclude that a hotel must evict a guest in a reasonable manner, which precludes ejecting a guest into foreseeably dangerous circumstances resulting from either the guest's condition or the environment. We further conclude that here a reasonable jury could find a breach of this duty on the present record."

The dissenting judge cautioned against the potential ripples of the decision. "This was an undeniably tragic case. The majority's imposition of a duty on the Westin under the facts of this case, however, is a great expansion of tort duty in Colorado. Hotels will now have an expanded duty to protect evicted guests, and I fail to see any distinc-



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tion in the majority's reasoning which will prohibit such a duty from being expanded to any business owner."

Long ago, after their first defeat in court, Bill told Janelle to no longer count on anything from the legal system. But it had been so long since they'd heard good news it was hard not to be excited. They had waited six years for this moment. "We're on cloud nine," Janelle said. That evening, the Grohs invited their daughter, Jennifer, and her two-year-old son, Brady, over for a family dinner. Janelle planned to cook her signature spaghetti and meatballs, which she's made for the past 40 years. Jill slept well that night.

THE GROHS' VICTORY doesn't ensure a straight shot to a trial; it's one more step in a seemingly endless ladder of appeals. "The first few years we waited," Bill says. "Then all of a sudden, out of the clear blue sky, we're being told we're going to court. And now we have to wait again." About a month after losing the Court of Appeals decision, the Westin filed paperwork asking the Colorado Supreme Court to hear the case. (The court's decision was still pending at press time.) The Westin's lawyer, Richard Waltz of the Denver-based Waltz Law Firm, declined to speak about the case, saying, "I think it would be inappropriate for any lawyer to comment on a case before the Supreme Court." Starwood Hotels & Resorts World-wide declined to comment.

Trying to predict the movement of the state's highest court is a fruitless endeavor. But the Groh case might pose a legal question that interests the justices, particularly because of the way the Court of Appeals framed its decision as breaking new legal ground in Colorado. The odds, however, are against the Colorado Supreme Court taking *any* case—it only hears about one out of every 10 requests.

If the court does decide to hear *Groh v. Westin*, it could be months before arguments are presented and then several months more before a decision. Conversely, if the court doesn't take the case, the whole thing would head back to the District Court level and be scheduled for trial—which could take at least six months and more likely a year. If that happens, three years of appeals will have been lost to not-so-summary judgment, only for things to return to where they were in 2010.

Even if the case goes to trial (the Westin could attempt to settle), and even if a jury finds the Westin is at least partly at fault for what happened (a jury could assign the hotel a percentage of the blame), that decision could be appealed. The situation is reminiscent of Charles Dickens' *Bleak*



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*House*, a tale that centers on a civil lawsuit that has stretched on for generations. Dickens' novel is a commentary on the failure of the legal system. The difference is that the *Bleak House* case is about material possessions and money. The Groh case is about a woman's life.

The Grohs can't forget the way Westin employees treated their daughter and her friends that night. Part of them, though, needs to move on, and in some ways they have; they are too consumed with caring for their daughter to closely follow a convoluted legal battle. And, yet, it is the very same legal system that may offer the Grohs their best chance of closure. People have long found a sense of finality in being heard by a jury of peers, and Bill and Janelle believe they could find this, too. But they have already lost six years to the courts—and could easily lose more.

**OFTEN, IN THE HOURS** after midnight, Bill thinks about everything that has happened, about his daughter and the accident. There have been so many moments for the Grohs to process: the time Jill said she was considering coming home to Arizona and Bill encouraged his daughter to stay at her job in Denver; that night at the Westin when Jill and her friends wandered into the night and her parents couldn't protect her; Jill deciding on the hospitality profession and being sent to Colorado; a car breaking down on that particular stretch of highway at that particular moment on that particular night; Shafner taking their case; the Court of Appeals judge retiring when he did. The moments are easily divided into two categories: before and after the accident. "It's really like our lives have two parts," Bill says. "Everything is so different."

In this afterlife, the Grohs have found solace in baseball. The games make for a nice family outing, a respite from the grind of caring for their daughter; the sport also reminds the Grohs of when Jill was younger—she worked at the ballpark a couple of summers during college. "It's the one place where we can get away and be semi-normal," Bill says. This year, the Grohs bought a 28-pack of tickets to see the Arizona Diamondbacks. They often have good seats in a wheelchair-accessible row to the first base side of home plate, in the middle deck at Chase Field in downtown Phoenix.

One afternoon in July, the Grohs readied Jill for a game. Janelle dressed her in a red shirt and tied a red ribbon neatly into her hair. The Grohs packed a bag with, among other things, a red blanket for Jill that a friend had given her, a bottle of Compleat, and a few cans of Dr Pepper for Bill. Dr Pep-

per isn't sold in the stadium, so Bill often tries to sneak a couple of cans in.

When they arrived at the ballpark, the national anthem was already in progress. It sounded like a little girl was singing the song. Janelle wheeled Jill to a spot with a view of the field. There was the child, singing in front of tens of thousands of fans. Janelle gazed longingly at the little girl. When the song ended, Janelle rubbed the goose bumps along her arms. The Grohs made their way to their seats. Proudly dressed in a new Tommy Bahama button-down picked up during one of his trips to Walmart, Bill pulled up a folding chair and sat next to Jill. He slipped a baseball glove on his left hand.

Bill didn't always bring a glove to the games. Sometimes the Grohs sit in foul-ball territory, and a few months ago a batter cracked a ball that catapulted into the second deck and smacked the concrete right where Jill had been sitting in her wheelchair. Just minutes before, Janelle had taken Jill to the bathroom to feed her. Ever since, Bill brings his glove.

On this day the Diamondbacks started a four-game home stand against the Milwaukee Brewers. The home team got off to a predictably slow start, given that they had played a 14-inning game the night before. The Diamondbacks starting pitcher gave up two runs in the first inning and another in the third. Like any sports fans, the Grohs want their team to win, but these outings aren't about the game. The score is meaningless. The trips to the ballpark are about sharing a moment as a family: Bill sipping his contraband Dr Pepper and eating peanuts out of a ziplock; Jill in a red bow, red shirt, and blanket; Janelle dressed in a matching red top chatting with her sister, Jeri, who often joins them. The crowd noise, the countless other families surrounding them—it is all so normal.

During one of the early innings, Janelle and Jeri left to get something to eat. Bill sat so close to his daughter he could have wrapped his arm around his little Jilly Bean. Bill's left hand was fitted inside his mitt. He cradled Jill's palm with his right, rubbing his thumb near the scars just below her knuckles. The Brewers were up to bat. The Diamondbacks pitcher fired a bullet off the mound. *Crack!* The ball zipped into the second deck. It headed straight for Jill. Bill reached across his body with his left hand and snatched the ball with his glove a few inches above Jill's chest. With the ball tucked inside his glove, Bill turned and looked into his daughter's eyes. It was almost as if Jill smiled. ▲

**CHRIS OUTCALT** is 5280's assistant editor. Email him at [letters@5280.com](mailto:letters@5280.com).