

## I Just Fell Into It!



### An Interview with Mystery Writer/Lawyer Phillip Margolin

One of the best-known members of Portland's legal community is Phillip Margolin, who has achieved international renown as the author of six legal thriller mysteries—five of which have been New York Times best sellers in the past five years. One day in April, The Hon. Ellen Rosenblum sat down with Margolin to find out just how he made the leap from lawyer to author and what, if any, effect his experience in federal court has had on his writing. The following exchange is excerpted from that interview.

**Rosenblum:** You have said to me that you “just fell into writing.” How did that happen?

**Margolin:** I was always in awe of writers, but I never thought I had the ability to be one. After college I was in the Peace Corps in Liberia, West Africa. Then I worked my way through New York University Law School. My last summer in law school I didn't have to work and I had a light class load. I could never figure out how guys filled up 500 pages with words, so I decided to spend the summer seeing if I could write a novel based on my African experiences—not to get published or anything, just to see if I could write something more than 25 pages. I started writing this novel and it was

fun. I liked doing it. I hadn't finished it when I moved out to Oregon, so I kept working on it. When I finished, it wasn't very good.

**Rosenblum:** Which novel was it?

**Margolin:** Well, it was never published. I got 187 pages written, so I felt I had accomplished my task. The big thing was I enjoyed sitting down and just writing, so I decided to write another novel. I wrote a second one which was a really horrible murder mystery. But again, I liked doing it. I never tried to get the thing published because I didn't think anyone would want it, and it was so horrible no one would!

I used to write a science fiction short story once a year and try to get it published. They were just terrible, and they all got rejected. In '73 I decided to write this suspense thriller short story for a change. It got rejected by one mystery magazine, and then I did a rewrite and sent it into another one. Lo and behold, they said they wanted to give me \$65 to publish it. I was just ecstatic!

All of a sudden I said, “Well maybe I can actually do this.” This short story was so different from the rest. It had a very believable main character you could relate to, as opposed to my science fiction story where people had plaid eyeballs, or my murder mystery, where a chess grand master solved this mystery from his room.

The other thing I found was that the plot was unpredictable. When you start out with the story, you have no idea what is going to happen. Surprises keep popping up that make the reader want to keep reading. I sort of discovered this on my own.

**Rosenblum:** Tell me how you got your big break.

**Margolin:** When I was clerking for Herbert Schwab, the chief judge of the Oregon Court of Appeals, I became fascinated with the famous Peyton-Allen case because it had an 800-page brief. I had never seen a brief like that before. It was just stupendously huge. For some weird reason I got hooked on it. I think it is the single most complex and amazing murder case in American history. [The Peyton Allen case involved the murder of two recent high school graduates who went out on a Friday night date and were

never seen alive again. It strayed in the courts for about 20 years and involved hypnotized witnesses, circus trials, sex slaves, and tons of other fascinating aspects.

Fortunately for me, there weren't very many people writing in Oregon in the 1970s and I got it all to myself. Nobody from New York or L.A. glommed onto it because they didn't know about it. I said, “Now I want to write a novel for real, and why not fictionalize Peyton-Allen?” So I started writing.

I had five chapters and an outline when a friend calls me up whom I hadn't seen since law school. He was coming out on vacation, and did I want to get together with him and his wife? I said “Great!” It turns out he is one of three lawyers for the largest literary agency in the world.

So I said, “Well, Marty, you know I'm writing a book.” He goes, “Oh, no!” He was real nice, though. He took what I had written back to this agency and gave it to a guy who had never sold a book before. Two weeks later I was in trial and when I came back to the office at about 5:30, everyone was sitting around with champagne. I said, “What's up?” and they said, “Your agent called and they sold your novel!”

**Rosenblum:** This is which novel?

**Margolin:** *Heartstone*. That was in '78.

**Rosenblum:** Now none of your books actually involve the federal courts specifically, do they?

**Margolin:** I haven't set one in federal court yet. One reason is that most of my books involve a murder trial, but the one I tried there was an Indian reservation murder. It is unusual to get murder trials in federal court.

**Rosenblum:** Do you remember when you first set foot in a federal courthouse?

**Margolin:** Yes, I do. It was in the '70s. What I remember is that I had a really tough time getting on the appointment list. The first case I had was in front of Judge Belloni, and it was a very exciting case. This was a young woman who had been going shopping with her girlfriend when her boyfriend drove up in his car. He was a big drug dealer, and he asked her if

she wanted to go do something with him. He drove to a Red Lion Inn and went into the bar and made a heroin sale to an undercover treasury agent.

The agent gets in the back of the car and the dealer pulls out this heroin. My client was so scared that she didn't say anything. She was scared to death. Her friend gave the heroin to this guy and the money came up front and the drug dealer says to the girlfriend, “Count it.” To which she still didn't say anything—she was too scared to even talk. That was it. She got arrested and she claimed she didn't know a damn thing about this up until the time he pulled the heroin out from under the seat.

Chuck Paulson was the lawyer for the other defendant. He got up and made an opening statement. I got up and told the jury that this was the most disgusting display I had ever seen—how chivalry was dead and how this piece of garbage wouldn't own up to the fact that he was dragging his girlfriend into this. After my opening statement, Paulson pleaded his guy guilty and made a deal to have him testify. I just ripped the guy on cross and then put on a whole series of character witnesses.

I was a very new lawyer, and I was embarrassed to ask certain people certain questions when I was interviewing because I didn't want to embarrass or insult them—one of the questions being, “Have you ever been convicted of a crime?” My first two character witnesses were great. But when Jack Wong, the U.S. attorney, asked the third one, “Have you ever been convicted of a crime?” the guy says YES. It turns out this guy was one of the biggest Ritalin dealers in North Portland and I didn't know it!

**Rosenblum:** Oh, boy!

**Margolin:** It wasn't over yet. The jury goes out and the judge says we've got a message from the jury. Juror number seven wants to speak with us in chambers. This juror says, “I work for the phone company and I've been employed by the FBI to put a tap on that witness's phone.” So the judge says, “What do you want to do? Do you want a mistrial?” I said, “No, let's just do it.” It was a not guilty verdict, but I learned many a lesson from that.

*Continued on page 6*

## On Our Members' Bookshelves



### The Great Chief Justice: John Marshall and the Rule of Law by Charles F. Hobson

Reviewed by Jeffrey J. Druckman

In this new biography of John Marshall, historian Charles Hobson analyzes the landmark decisions of the early Supreme Court that consolidated the central authority of the American government and severely limited states' rights. When Marshall took the oath of office as chief justice in February 1801, the division of power between the federal government and the individual states was by no means a settled issue. Hobson makes a persuasive case that Marshall was uniquely qualified, by virtue of stature and intellect, to establish the legitimacy of the Court as the arbiter of public questions, so that its decisions would be accepted as the law of the land.

Marshall's achievements before his appointment to the high court compel a modern citizen to examine anew the qualifications of twentieth-century justices. Prior to his appointment, Marshall was a soldier, state legislator, executive councillor, lawyer, commissioner to France, member of Congress and secretary of state. Hobson notes that Marshall was a clear thinker, whose written opinions moved logically from premise to conclusion and who was able to guide the court through “collaborative deliberation.” Justice Story's description of Marshall provides a model for every jurist: “patience, moderation, candor, urbanity, quickness of perception, dignity of deportment, gentleness of manners, genius which commands respect, and learning which justifies confidence.”

Hobson carefully reviews Marshall's decisions in cases involving the role of the Supreme Court, property rights and contract laws, national supremacy, and states' rights. As Hobson points out, at the time *Marbury v. Madison* was decided, judicial review was well established and courts in the United States had previously declared laws unconstitutional. Indeed, Marbury's declaration of a congressional law (the Judiciary Act of 1789) as unconstitutional raised few eyebrows at the time. More disturbing to the Jefferson administration was the Court's dicta that the chief executive had acted improperly in denying Marbury his commission.

Hobson believes that Marbury laid the groundwork for modern judicial authority only indirectly. He points out that in 1803, no one could have foreseen the emergence of the tendency, later noted by Tocqueville, to turn the “great public questions” into judicial questions. It is interesting to note that Marbury was the only case in which the Marshall court found a congressional law unconstitutional and that, in doing so, it limited its own authority (to issue writs of mandamus to officers of the federal government). Hobson discusses at length several cases in which the Marshall court abridged state powers. How Marshall did so through the contract clause and the commerce power makes for an interesting story. The importance of these questions and the depth of the divisions they caused are evidenced by the fact that a civil war was fought over them 25 years his death.

Marshall's great contributions, according to Hobson, are not so much the establishment of the judiciary as a counterweight to the executive and legislative branches, but the development of the Court as the arbiter of questions relating to the structure of government and as an important player in the consolidation of national power. Anyone interested in American constitutional history will find this carefully researched and well-written book worthwhile.

Jeffrey Druckman is a sole practitioner in Portland and a member of the U.S. District Court Historical Society's executive committee.

## THE ARTFUL SIDE OF THE LAW

By ANTONIA M. DEMEO

### Selecting Art for the Courthouse



According to Judge Malcolm Marsh, the goal of the Portland Community Art Panel, which chose art for the new Mark O. Hatfield U.S. Courthouse, was to select pieces that would "relax the tensions of approaching the Courthouse."

"It was our hope," said Judge Marsh, "that the public would view the art as a calming influence from the anxiety normally associated with court proceedings. The Art Panel did not want monolithic pieces of art traditionally associated with halls of justice, but pieces that would attract people to the Courthouse."

The Panel was made up of 16 volunteers, including local art professionals, community representatives, the building's architect, and Judge Marsh (the U.S. District Court representative). In 1995 the group began the monumental task of selecting those who would create public art for the new building.

In choosing the artists, the Panel followed guidelines and criteria established by the Public Buildings Service of the U.S. General Services Administration (GSA) under the Art-in-Architecture Program. That program was created in 1963, following the recommendation of President Kennedy's Ad-Hoc Committee on Federal Office Space that, where appropriate, fine art should be incorporated into the designs of federal buildings, with an emphasis on the work of living artists.

Under the program, one-half of one percent of the estimated construction costs of a new federal building is allowed for public art, but for the Hatfield Courthouse, one full percent was used. Due to security requirements for the new courthouse, it was not possible to comply with certain city zoning regulations requiring retail space on the ground floor, so additional money was dedicated to art.

After the GSA provided notice to artists nationwide, the Portland Art Panel was deluged by over 220 proposals, which the Panel spent countless hours reviewing. First, the group narrowed its choices to 50 artists, then to 30, 10, and finally (by unanimous vote) 4, who made their final presentations on October 30, 1995. They are—

- Eric Orr, who created the water sculptures in the lobby which, according to Judge Marsh, "offer a break from the normal austerity of courthouses;"
- Sandra Stone, who embedded historically significant words and phrases into the walls of the Courthouse, inviting a "walking conversation through the building;
- Tom Oterness, who sculpted charming bronze creatures for the ninth floor terrace that offer "whimsy and a critique of the court system;" and

- Judith Poxson Fawkes, whose woven tapestries emphasize Oregon history and grace the walls of the 16th floor ceremonial courtroom and lobby.

Interestingly, the Art Panel did not select any traditional paintings and, according to Judge Marsh, quickly bypassed traditional murals—perhaps because portraits of the district court judges, scattered throughout the courthouse, already fulfill this role.

The Panel's insightful selections will surely touch people in many unexpected ways and allow for a broader view of the purposes of a courthouse.

Antonia De Meo, a member of our society's executive committee and an associate at Markowitz, Herbold & Mehlfaf, P.C., holds an art history

### Margolin Interview continued

Rosenblum: How do you make a courtroom scene in a book interesting?

Margolin: Well, you make it as unlike a real courtroom scene as possible.

Rosenblum: Oh, great!

Margolin: It is really true. Courtroom cases drag on, they're slow, there are lunch breaks, bathroom breaks. When you write, you just leave in the interesting stuff. You don't have to do re-cesses, and of course I can set up my cross-examination so that exciting things happen. In my books I've never lost a motion to suppress. And if the judge rules against me, I just have his head cut off in the next chapter!

Rosenblum: Because you are a lawyer and like practicing law, do you want to give the public a positive image of the profession?

Margolin: I try to portray lawyers in my books as being decent, hard-working people who are not perfect. Obviously, I want to make the books entertaining, but I really get mad at lawyer bashing. I think law is an extremely honorable profession. I lived in a dictatorship in West Africa for a couple of years, where the government was very oppressive and you didn't have the right to representation. I see lawyers as standing between the government and the people and helping to represent them.

Rosenblum: Have you used your expertise in the area of the battered woman syndrome in any of your fiction?

Margolin: In *The Burning Man* I have a battered wife as a character. And I use the legal stuff I learned as a lawyer—neutron activation analysis in one book, blood spatter in another. The new one, *Undertaker's Widow*, involves blood spatter. It is very important.

Rosenblum: How does it feel to finish a book?

Margolin: It is really satisfying—like winning a case. You know, everybody leaves the courthouse and you sit by yourself and say, "I don't have to do any more, and it worked out pretty well. It wasn't perfect, but I did a good job. You really feel satisfied."

Rosenblum: The difference between the two is that now you get royalties!

### "Legal Eagles" continued

United States, following the death of Chief Justice Salmon P. Chase.

Williams ultimately was denied that loftiest of American legal posts, however, by a convergence of unusual circumstances. For one thing, Eastern traditionalists questioned whether his five years on the Oregon territorial court was sufficient experience for a chief justice. For another, Williams' wife Kate made social enemies in Washington by airs she affected as the wife of a Cabinet member and by her exultant reaction to her husband's nomination as chief justice.

The fact that Kate rode around Washington in a horse-drawn landaulet provided to Williams by the federal government prompted an investigation of Williams' spending. Though the investigation ultimately found no improprieties, Williams' political opponents labelled him with the sneering nickname "Landaulet Williams," an appellation that stayed with him the rest of his life. And back in Oregon a political dispute involving his old law partner, Addison C. Gibbs, undercut Williams' home-state support.

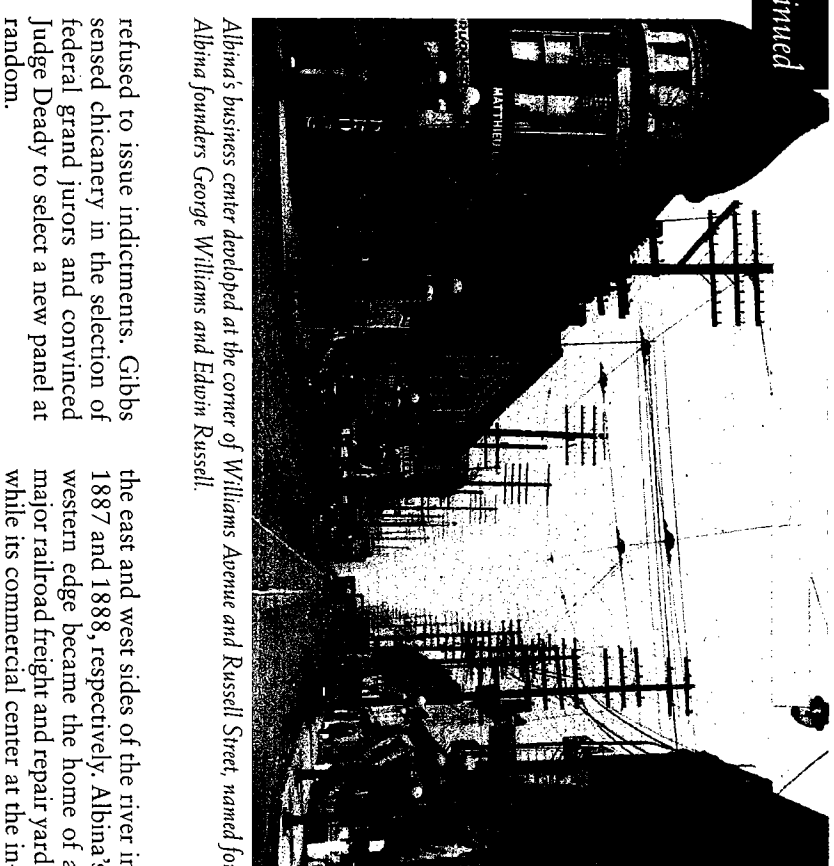
### The Plot Thickens

The dispute involving Gibbs arose from an 1873 congressional election, in which a Republican nominee supported by Senator John H. Mitchell was defeated by his Democratic opponent, Mitchell, whose domestic and marital problems were a primary topic during the campaign, was thought to have engaged in voter fraud in Portland during that race. Former Governor Gibbs, then serving as United States attorney for Oregon, presented evidence to a federal grand jury, which



George Williams and his wife became the objects of official investigations when it was alleged he gave her a handsome landaulet and horses at government expense.

refused to issue indictments. Gibbs sensed chicanery in the selection of federal grand jurors and convinced Judge Deady to select a new panel at random.



Albina's business center developed at the corner of Williams Avenue and Russell Street, named for Albina founders George Williams and Edwin Russell.

At Mitchell's request, Williams ordered Gibbs to halt the investigation or be replaced. Gibbs refused to back down, so Williams fired his old partner and replaced him with Rufus Mallory, who subsequently became a leading corporate lawyer. The outcry over Gibbs' removal helped convince Williams that he lacked the political support to be confirmed as chief justice. Rather than face that humiliation, he told President Grant to remove his name from consideration.

Mallory, after seven years as U.S. attorney, was elected to one term in Congress, where he represented Oregon from 1867 to 1869.

### Back Home, Williams Helps Found Albina

Although George H. Williams remained in the East until 1881, he strengthened his Portland ties in 1872 while serving in the Grant administration. He and Edwin Russell, a Portland banker, bought an interest in a small township just across the Willamette River from Portland. They named the township Albina, for the wife of the prior owner.

Albina grew quickly after the original Morrison and Steel bridges linked

the east and west sides of the river in 1887 and 1888, respectively. Albina's western edge became the home of a major railroad freight and repair yard, while its commercial center at the intersection of Russell Street and Williams Avenue was the heart of a thriving community until Albina merged with Portland in 1891.

Fred Leeson is a Portland newspaper reporter who spent 13 years writing about Multnomah County courts. He is an inactive member of the Oregon State Bar and is a graduate of Stanford University and the Northwestern School of Law and Lewis & Clark College.

### CALENDAR

August 30 . . . Annual Picnic at Sauvie Island School, 1-4 PM

November 5 . . . Annual Meeting 5:00 PM, Social Hour & Dinner. The featured speaker is E. Barrett Prettyman, Jr., of the Supreme Court Historical Society.\*

\* Watch your mail for invitations. For nominations to the Board of Directors, call Jeff Batchelor at 778-2157 before October 1.

