

## **Fifteen Fascinating Oregonians**

*The great state of Oregon draws in some of the most fascinating people on the planet. Whether it's the awesome mountains, rivers and beaches or the lure of an inspiring job, they continue to arrive, make their homes, and go about their lives—their fascinating lives. Many are beckoned by the freedom the state has come to symbolize. Others have always been here, born and bred. Look around; you'll see them. Unsung heroes, working, producing, making Oregon better, stronger. They're building a healthier economy, creating jobs, inventing, growing, striving. Look around; appreciate them. They are your neighbors and your friends. Or maybe you only need to look in the mirror.*

### **Kelly Clark**

by Bridget Barton

Family matters to Kelly Clark; you can trace his character through his roots. But memories of his childhood are mixed. “I didn’t have a particularly happy childhood,” he says. “And I didn’t grow up in a home where we read books, or where politics was ever on the front stage. There was a serious alcohol problem in our family and my folks divorced when I was 12.”

Still, from each parent an important personal trait can be traced. From his mother, who still lives nearby —intellectual curiosity. “My mom was a southerner, not highly educated but, interestingly, she always had kind of a curious mind, and still does. She’s 84, and she’ll call me up after watching the Discovery Channel and say, ‘Did you know this or that...?’”

And from his dad, who passed away a year and a half ago —an instinct for good business decisions. “He was an incredible man, an entrepreneur, who started 33 businesses in 16 different industries, everything from bridge building to vocational school, oil to furniture manufacturing, insurance to commercial garbage. He’d find an industry that was fruitful, find somebody that knew the industry, who was under-appreciated and under-employed, and make them a 20 percent equity partner,” says Clark. “Only one time did he pick something that didn’t work out; he had an amazing ability to pick good people.”

Clark is stepdad to Meaghan, 17, Molly, 14, both at Lake Oswego High School, and Ryan, a seventh-grader at Lake Oswego Junior High. And Clark is beginning to see traces of that intellectual curiosity blooming in his daughter Katie, a freshman at Boston College.

“I didn’t really develop any kind of rigorous thinking until I got to Lewis and Clark College,” admits Clark. “I realized, okay, there are some really smart people in the world, and I’m going to have to fight to be one of them.”

Clark went on to earn his law degree from Northwestern School of Law at Lewis and Clark. And from there, the rest is Oregon history. You’ll find Kelly Clark’s name on

some of the most influential cases affecting Oregon's government structure and, most important, affecting the rights of everyday Oregonians.

How does he pick his cases? "My criteria has been that I want it to make a difference," says Clark, "either out there or in somebody's life. People don't walk in here unless they have to. By the time they come see a lawyer because they were sexually abused as a child, they *have to*; they can't deal with it anymore. It's got to come out. Those are cases where I say, this is really going to matter to this person. This is really going to help change their life. That's worth spending time, energy and money on.

"There are a lot of good cases: business one having a conflict with business two. Yep, that's a good case, a fair case; there are legitimate legal and factual issues, a lot of money at stake. But it's not the same thing to me. There's nothing wrong with garden variety commercial disputes, but it's not really going to change anybody's soul or change the world. It's not really going to free anybody up.

"I've been thinking about the dynamic of freedom. I think of it in terms of 'Is it going to matter? When I shuffle off this mortal coil, is it going to matter that we did this case? Is it going to matter in community terms or is it going to matter in somebody's life?'"

And that thinking has led Clark to take some very high profile cases in the last decade, including term limits, Measure 37 land use cases, Measure 36 (the Defense of Marriage Act), the fight against the Florence casino, and a long client list of priest abuse victims.

"If there's a constant theme to the cases," says Clark, "it's generally that we are representing somebody, a business, family or individual, up against the big guy. It's almost always a David and Goliath thing. Once in a while it's a Goliath-Goliath, but usually we represent an underdog-type person. And if anybody is an underdog in this state, it's a property owner—somebody who believes that their rights to real property should be given equal priority with free speech rights or criminal defendants' rights. To get that government mentality to move a little bit, so people can exercise their rights, is a challenge. How much grief would we get in this state if the government was going to take away just a little bit of our free speech rights? Just a little infringement—just about 40 percent of your free speech? That wouldn't stand for a minute. But somehow when it's property rights, it's like a second tier."

And so Clark's firm, O'Donnell & Clark, has stepped in to help people with Measure 37 claims.

Handling controversial cases doesn't faze Clark, but what about others in the office? "We've got a rule that if anybody's uncomfortable on a particular case, they don't have to work on it; we have conscientious objectors. When we did the gay marriage thing, we had a couple of people who said, 'We disagree with you on this.' And I said, 'Okay, great, you don't have to work on it.' But the atmosphere is pretty loose—I don't want to say fun, because the stakes are high, but people enjoy really their work. People really believe in what we do here. They treat it as a vocation, a calling.

“The first Catholic case I had—it was admitted abuse. The priest admitted abuse,” says Clark. “The victim went into counseling and the Church was paying for it. The counselor said, ‘You really need to be in an alcohol and drug treatment program for awhile.’ It cost \$25,000 or something, and the church balked at that. This was admitted abuse, serious abuse. The guy was credible, the priest was alive, he admitted he abused this kid. And they wouldn’t pay for the treatment. That’s when he came to see me. That case was on appeal for seven years.

“The day before the Supreme Court argument, the victim would have taken the one \$100,000 insurance policy they had. And they called the night before the Supreme Court argument and offered \$5,000. They said the law was on their side in the Court of Appeals. They could have settled that case with a \$100,000 policy; it wouldn’t cost them a dime. And they offered \$5,000. We rejected it.

“The Supreme Court came down on our side, and that is what opened the floodgates. When they had a chance to do the right thing, and nobody was looking, and take care of this guy, they didn’t. And then for him it became about the money. He wasn’t angry, he was just like, ‘I guess I have to take this to trial to in order to get their attention.’ Years later we settled before the trial for a lot of money.

“People say, ‘How do you know people are telling the truth?’ And I say, ‘You know what? Just like you can tell if somebody served in Vietnam.’ You sit across the table and you talk to ‘em and you look ‘em in the eye and you see them shake when they start talking about this, and you see how hard it is for them to say what happened to them. And you say, either this guy deserves an Oscar, or he’s telling the truth.

“I’ve had a handful of people come in who were so emotionally and mentally disturbed that I couldn’t tell what the truth was,” he says. “So I sent them away because I couldn’t prove the case. And actually I’ve had one client that I fired because the further I got into the case and saw the facts, they didn’t match up. The priest wasn’t at this church when he said he was; the records didn’t back up the story. I don’t say, ‘I think you’re lying.’ I just told him I didn’t think I could prove his case.”

A handful of others, says Clark, later on decided they didn’t want to pursue their abuse cases. “But most people,” he says, “by the time they come in, it’s like an infection, a boil, it’s got to come out. And I’m oftentimes the first person they’ve ever told about what happened to them. It’s sometimes scary. We’ve got a whole speed dial list of counselors and emergency therapists we can get in touch with.

“I do say really forcefully to people when they come and see me, ‘You are not going to feel better at the end of this when I hand you a check, unless you’ve done a whole lot of work between now and then. I can promise you that it doesn’t make you not hurt. You’re going to have to do your work or this is going to be meaningless.’”

Clark's firm does much of its work on a contingency basis, leading some critics to wonder if money is the motive behind some of Clark's David vs. Goliath cases. But Clark says most often money is a symbol to clients that they were right. "It's a symbol to them that society says, 'We're sorry,'" says Clark. "They want some acknowledgement; they want an apology. They want counseling or therapy, and I'm not just talking about the church cases. We've had cases against schools, sports organizations, the Boy Scouts, other churches."

But when victims feel like they have not been taken seriously, then it becomes about the money for them. "We have an interesting conversation when we're picking juries on cases that involve something other than out-of-pocket losses. It goes something like, 'How do you feel about the fact that we symbolize justice in our society with money? Are you okay with that? If you're not okay with that, then you shouldn't be on this case. You should go be on a business case, a criminal case, or a real estate case. Because the only system we've got is that you're going to symbolize what happened to this man, if you believe him, by putting a dollar figure on it. I didn't make up that system; don't blame me. He didn't make up that system; don't blame him. The fact that the only way he can pay me is if I get a percentage of the case, don't blame us for that. Or if you're going to blame us, say so now, and excuse yourself from this jury.'

"Let's get honest about what we're doing here. We're trying to symbolize justice. If we had a blue button system where nine out of 12 of you could agree that this shouldn't have happened to him, and you could just press the blue button and go back in time and undo it, he'd ask you to push the blue button. But we don't have the blue button system, so what are you going to do?"

"Boy, they really squirm, at least some people do. And then other jurors say, 'I don't have a problem with that.'"

Lately Clark has taken an interest in the constitutional issues involved in the so-called "clean money elections." Apart from whether or not it's a good idea, Clark says what the new law really says is that there are two kinds of political speech. "You've got what I'm going to call a grassroots candidate, which is the kind the Portland ordinance loves: Birkenstock-wearing, involved in the neighborhood association for years, has a great network out there, and he can easily raise 1,000 contributions of \$5 and get in the system, boom. You've got another candidate, just as knowledgeable, just as qualified, except that person has spent his whole career in business. He doesn't have that kind of grassroots network. He wants to exercise his political speech by using money to get his message out, as opposed to using people.

"The city of Portland says A is a better kind of political speech than B, and has created a whole system of public support for A, from which B is excluded. That's a value-based determination of types of political speech that I just don't think is going to fly. It's government picking and choosing among types of political speech, and I don't think you can do that, certainly under the Oregon Constitution, and maybe not even under the federal Constitution.

“It would be an interesting case,” says Clark.

Clark smiles as he remembers a similar case back in 2000, a case they won. “We had a whole interesting cross section of clients, all initiative buffs. The Secretary of State’s office had declared certain categories of voters as inactive. If you didn’t vote for five years or you moved and hadn’t immediately re-registered you were declared inactive, which meant you couldn’t sign an initiative petition. You could still show up and register before you voted, but in the meantime, you couldn’t sign an initiative petition. And they never sent you a notice that you had been deemed inactive; they just took you off the rolls. So we challenged that on due process grounds and won. We walked into the courtroom of Judge Marcus in Multnomah County, a bright, bright guy. We, being Lloyd Marbett, Don McIntire, Ruth Bendl, Dan Meek, Joanne Bauman...even Bill Sizemore showed up to watch. Marcus looks up and says, ‘This reminds me of the cantina scene in “Star Wars.”’ Every kind of political animal was in there—it was odd, very odd.

“Marcus was very interested in the case. He actually wrote his decision so it was dated on July Fourth. He ruled it unconstitutional; they had to give notice. Bradbury complied with the ruling—I think he started sending out postcards or something.”

One thing that sets Clark apart from other lawyers who work hard for underdogs is a strict rule about clients who have substance abuse issues. “And a lot of them do,” adds Clark. “I tell them, ‘I’m in recovery (14 years), and I’m not going to work my ass off for you here for the next three years and give you a check, just to watch you snort it away or shoot it away. You either get in recovery and stay in recovery, or I’m not taking your case.’

“I put that in my fee agreement. If they quit recovery, I quit their case. I do it for their own protection,” Clark says. “You put alcohol or drugs on top of some emotional or mental problem, and it’s out of control. But I don’t think we’ve lost anybody because I insisted they get sober and stay sober. At least a dozen have gotten sober. I’ve had guys slip, but the rule is if they actually quit recovery, not if they screw up. At least during the two or three years that I was working with them, they cleaned it up. That’s a good start.”

Clark remembers one case in particular: “I had a guy come to me one day, good guy, educated guy, worked as a chef in a nice restaurant here in town, and I could tell that he had been drinking, so I got real honest with him about it, right up front. I said, ‘You go away and you come back when you’ve got 90 days clean and sober. When you’ve done the 12 steps, and your sponsor calls me and says you’ve got 90 days—then I’ll take your case.’ And he came back 92 days later, clean and sober. We represented him; he had a good case and got a good settlement. He wanted to take care of his mother in her old age so he set up a trust fund. And then eight weeks later, he got pneumonia and died in the space of 10 days. But I know he went out in peace, free of his demons. That makes it all worthwhile.”