

November 2002

Jonathan “Jon the Baptist” Clark Joins O & C Team

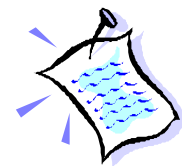
O'Donnell and Clark is pleased to announce that Jonathan Clark has been hired as an Associate Attorney. Jonathan is a native Oregonian from northeast Portland who graduated from Madison High School in 1983. Following high school he entered the United States Marine Corps Reserve and began attending Western Oregon State College (now Western Oregon University). He earned a degree in education from WOSC and, following a brief stint as a full-time staff person with the Baptist Student Union, began teaching high school English. During his teaching years, Jonathan and his family spent two years in Japan. At the end of his teaching career, he started the Transition Classroom for Multnomah Educational Service District, a program for at-risk youth, most of whom had been incarcerated and were returning to their neighborhoods.

Jonathan left teaching to begin law school in 1999. He graduated from Willamette University College of Law in May 2002. During his third year of law school, he was a prosecutor for the City of Salem and gained significant trial experience, including substantial work in jury trials. After being admitted to the Oregon State Bar in September 2002, Jonathan comes to O'Donnell and Clark ready and able to pursue justice for our clients in the courtroom.

Jonathan lives in Salem, Oregon with his wife and two sons, ages eight and one. He works with youth in community sports and at a local church.



Table of Contents



Cafeteria Plans	2
<i>By Mark O'Donnell</i>	
Suffer the Little Children	3
<i>By Kelly Clark</i>	
What's In A Name	4
<i>By Matthew Lowe</i>	
Contact Us	5
Post-Election Thoughts	7
<i>By Kelly Clark and Ross Day</i>	
Attorneys	8
Farewell to Ross Day	8
What We Do	8

Suffer the Little Children

Reflections on the Child Abuse Crisis in the Church

By Kelly Clark

“And they brought little children to Jesus that He might bless them, but the disciples turned them away and when Jesus saw it, he was much displeased, saying: ‘Suffer the little children to come unto me, for the Kingdom of Heaven belongs to such as these. Verily I say unto you, he who does not receive the Kingdom of Heaven as a little child will never enter therein’....”

Gospel of St. Mark, Ch. 10, v. 13-15.

Over the past several years I have represented almost two dozen men and two women, and have consulted with another dozen or so, who, as children were abused by priests they loved from a Church they trusted. Since some of these cases, especially recent ones, have gotten some media coverage over the past several months, I considered what I might write for the O & C newsletter that would be informative and enlightening, and not just a series of tragic images and stories that would really do nothing but leave us all feeling helpless and numb. And so it seemed to me that the better and most honest thing I could do is to offer you the questions that have baffled me since I first began to do this kind of work almost a decade ago, and to share with you the beginnings of answers I have stumbled upon.

There are three questions, and they are simple. There are more than three answers, and they are not simple. The questions are: Why do pedophile priests do what they do? Why do child abuse victims do what they do? Why does the Church do what it does?

Now, before we explore these questions, I need to make a disclaimer: I am not someone who enjoys suing the Catholic Church. Although I am not a Catholic -- I am a very ordinary and inadequate Episcopalian -- I have great respect for the Catholic Church: historically, as a guardian of values that I care about, and theologically, as the Church founded by the words of Christ and on the shoulders of Peter. Most of my historical, theological, and literary heroes are Catholics. Many of my best friends are Catholics. My law partner is a devout Catholic. I just married a lovely and devout Catholic. I have twice begun instruction to join the Church. Suing this Church is no fun for me.

But, once upon a time, someone referred to me a young man who had been abused by his priest. I began to look into the allegations, they made sense, I believed him. I took his case because it seemed right to do so. That was nearly ten years ago. I have since believed other men and women, and I have seen the wreckage left by the abuse. I worked on these cases for seven years -- the lead case going up to the Oregon Supreme Court -- before I ever won the right to go to a jury. I

believe in this work. It is worth doing. But, to be clear, I do not take any joy from it.

So, with that disclaimer out of the way, then, Question 1 is: Why do pedophile priests do what they do? Of course, “what they do” is to abuse kids: It ranges from molestation and fondling to more severe forms of abuse. These men, who to everyone else seem genuinely kind and charitable, would literally lie, steal, intimidate and threaten in order to set-up and cover up their abuse.

Why do they do this? Well, the easy answer is “because they are perverted and evil men, and therefore they do perverted and evil things.” But, after taking the depositions of many of these priests, reading the depositions of dozens of others, and reviewing more psychological material and literature than I care to remember, I will tell you that that is a simplistic answer.

The truth is, most of these men went into the priesthood for the right reasons. Most of them started out with a genuine affection and concern for kids. Most of them did not simply wake up one day and decide to spend the next 30 years destroying the lives of children.

No, what happens is pedophilia: a progressive, profound, addictive illness that warps the mind, the soul, and the body and turns men who would serve God into men who, wittingly or unwittingly, destroy lives and souls.

Pedophilia mixes feelings of love with abuses of trust; turns a desire for intimacy to a craving for lust; and takes the love of a father for a son and possesses it with all of the insanity and cruelty of a dope-fiend who will kill for his next high.

I have read poetry of a priest to his adolescent victim, where, side by side with a reverent poem is one full of sexual innuendo and explicit images that could be right out of the pages of a smut magazine. I have read stories of priests who, once in treatment and regaining sanity, took their own lives because they could not bear to contemplate the damage they had done. And I have taken the deposition of priests who cannot explain what they did.

continued on page five

CAFETERIA PLANS:
THE HOTTEST RECIPE IN EMPLOYEE BENEFITS
HOW TO CAP YOUR EMPLOYEE BENEFITS EXPENSE

By Mark P. O'Donnell

A cafeteria plan is a welfare benefit plan authorized by Section 125 of the Internal Revenue Code. It is a way of providing employees with valuable benefits where both the employer and employees save on taxes. Employees are given the choice to “redirect” part of their salary. Each employee then uses the “redirected” amount to purchase benefits from a “menu” of nontaxable benefits offered by the plan (hence the term “cafeteria” plan).

The plan offers, and the employee can purchase, medical insurance, group-term life insurance, disability insurance, dental insurance, eye and vision care, medicines, psychiatric care, daycare, reimbursement for non-insured medical expenses and basically any expense that is deductible under Section 213 of the Internal Revenue Code. The employer chooses which benefits to make available to employees, and employees, in turn, select the benefits that most suit their needs.

The employee pays for the benefits he or she wants from the cafeteria plan menu by electing to redirect an amount of salary sufficient to pay for each benefit. These amounts are redirected from the employee's salary *before* federal and state income taxes or Social Security taxes. The employer does not pay Social Security and certain other employment taxes on the amount of salary redirected by the employee.

We encourage clients to adopt cafeteria plans that feature a contribution by the employer. When an employer agrees to institute the plan, it agrees to contribute a certain amount per employee per month. This is usually tied to the then-current premium for medical insurance that the employer is paying under a group medical plan. As medical insurance premiums increase, the employee uses salary redirections to pay for the increase as well as the other benefits that the employee wishes to purchase.

You, as an employer, benefit from the adoption of a cafeteria plan by providing a benefit to your employees that will give them more disposable income each month. An employee's disposable income will increase because the employee pays for on ongoing expenses with *pre-tax*, rather than *after-tax*, dollars. Many employers find that this helps promote loyalty, motivation, and employee satisfaction, with the resultant long-term benefits to the employer's business. In addition, the cafeteria plan can be designed and structured to provide employers with cost containment on the ever-increasing expense of providing fringe benefits - particularly with group health insurance plans.

The only requirement for installing a cafeteria plan is to adopt the plan, execute a plan document, and have eligible employees make benefit elections. A summary plan description detailing the plan's eligibility requirements, benefits, and election requirements must be given to all employees. There is currently no initial filing for a determination letter with the IRS, as there is for pension or profit-sharing plans. The IRS recently eliminated the annual reporting requirement for cafeteria plans. You can administer the plan “in-house” or hire a third-party administrator. Third-party administrator fees are usually based on the number of employees serviced by the plan. It is our experience that, while these fees are reasonable, employers who have high participation in their company's cafeteria plan usually choose to administer the plan “in-house.”

Please feel free to call Mark O'Donnell if you want to discuss or have any questions about cafeteria plans. We have arranged for an excellent pamphlet explaining the same and would be glad to mail you a copy.

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What's In A Name

By Matthew D. Lowe

As if the world was not confusing enough, the name of your business is characterized not only as a trade name, but could also be a service mark. It could also be an assumed business name, a corporate name, a limited liability company name, or any other type of entity from which you conduct business. It could also be an internet "domain name." The characterization of your business name is critical, as it will dictate your rights to continued use of that name free of challenges under federal or state law.

As a general matter, your rights in your business name are dictated by federal and state statutory and case law. The primary federal law in this area is the Lanham Act. Many of the same principles contained in the Lanham Act are also contained in Oregon state trademark statutes. Any name that a person uses to identify a business, unless it is the "real and true name" of the entity or each person conducting the business, is an "assumed business name," including the addition of a word or phrase that suggests additional owners (*i.e.*, James Smith & Sons). The "real and true name" of a corporation is the name designated for the corporation in its articles of incorporation.

Both the "assumed business name" and the "real and true name" of the corporation are often also the "trade names" of the business. A "trade name" is defined as a word, name, symbol, device or any combination thereof used by a person to identify the person's business and to distinguish it from the business of others. A company's trade name can also be a trademark and/or service mark of that company. The key distinction between a trademark and a service mark is that a trademark relates to the identification of "goods" as opposed to services.

These very basic explanations of the various characterizations of a business name are introduced to illustrate the problems that can arise if you do not take at least some time to select an appropriate business name when forming a new business entity. For example, you may want to form a limited liability company which will own a small lodging facility in a small town just outside of Portland. Let us assume that you want to open the hotel under the name "Jake's Motel." You also decide to open "Jake's Restaurant" in the lobby of the hotel. Finally, we will assume that your name is actually "Jake." Believe it or not, you might very well open up your mail one day and find a letter from Jake's Grill, located in Portland, warning you to change the

name of your hotel and restaurant or it will sue you under both federal and state trademark law. Unfortunately, the fact that the Oregon Corporation Division advised you that the names "Jake's Motel" and "Jake's Restaurant" were available for use will not be a defense to the allegation of trademark infringement by Jake's Grill. The long and short of it is that this area of the law typically grants superior rights in the use of a name to those who use the name first.

One of the key inquiries will be whether your use of the name "Jake's Motel" or "Jake's Restaurant" is "likely to confuse" consumers. Even if you can establish that there is no likelihood of confusion among consumers, at least as it relates to the name of your hotel, Oregon law also grants Jake's Grill the right to preclude you from using the name "Jake's Motel" under Oregon's "anti-dilution" statute. Unlike state and federal trademark law, which require "likelihood of injury," the anti-dilution statute simply requires that Jake's Grill shows that your use of the name "Jake's Motel" in some way "dilutes" its good name. Suffice it to say that this is a very low burden of proof placed upon Jake's Grill, which you may have a difficult time overcoming.

This very brief overview of federal and state trademark and anti-dilution law is meant to provide you with some recognition of the importance of properly selecting a name for your business. Defending lawsuits of the nature set forth above can be extremely difficult and expensive, given that the issues involved nearly always must be submitted to a jury for resolution. While the Oregon Corporation Division has made it very easy to fill out what appears to be a very straightforward form, we would caution you to always seek the advice of legal counsel prior to selecting your business name and forming your business entity to minimize the chances of a lawsuit in the future.



So, what happens is pedophilia. That is the best explanation I have as to why they do what they do.

Let me clear up two misconceptions: Celibacy does not cause pedophilia -- there are plenty of celibate priests who perform their sacred call honorably and responsibly. Nor does homosexuality cause pedophilia -- anymore than heterosexuality causes a man to molest a young girl. Pedophilia causes pedophilia. It is that simple and it is that perplexing.

The Second Question is this: Why do the victims do what they do? Now, what the "victims do" is this: first, they "allow" the abuse to happen and they tell no one about it at the time; second, often they do not tell anyone for two, three, even four decades. Why do they do this?

The answer is easy when a child is 8 or 10 years old, especially if the abuse was in the 50s, 60s, or 70s. In those days, if you were a Catholic boy, you did what the priest said. The trust was absolute.

It is a harder question to answer when the boy is 12 or 14 and, at least physically anyway, could resist. Of course, even then, the trust is absolute. And, significantly, with boys that age the priests tended to gravitate towards boys who were less confident, less self-assured, less likely to reject or question the priests--the boys who were getting no attention at home, the boys from alcoholic homes, the boys without any self esteem. The priests would spend a year or two befriending these boys and building a friendship that was very important to the boys, so that, at the critical time, the boy could not imagine rejecting his friend and possibly losing the friendship. This is called "grooming." I sometimes refer to it as "the Pied Piper Phenomenon," which is why, so often, adult offenders of children -- priests, coaches, Scout leaders -- have so many victims: They are incredibly popular with kids and trusted by the families.

All this leads to the second part of the question though, which is, why the victims do not tell anyone, either then or later.

Well, sometimes there are threats: "no one will believe you," or something far more menacing. But always, threats or not, the victim blames himself for the abuse, at least until he begins to see clearly. So, guilt or shame is the reason they do the second thing they do. They go quiet and stay quiet for decades.

Psychologists tell us that a healthy "guilt" tells me that "I have made a mistake." This is also called conscience. It is a good thing. An unhealthy guilt, sometimes called "shame," tells me that "I *am* a

mistake." It is an all-covering embarrassment and sense of unworthiness. In the case of child abuse victims, it drives them to silence. The testimony of one boy who was abused at age 15 was that, immediately after the first incident of abuse, he told himself: "I am going to hell. I had sex with a priest. It was my fault. I must have tempted him." In the stereotypical victim, which all too often is precisely a true picture, within months or years of the onset of this guilt and shame, victims are abusing alcohol, drugs, sex, or themselves in an effort to find some mood altering substance or experience.

What triggers these men to come forward as adults really falls into two categories: First, they see their own children coming of age and realize that no child is responsible for sexual involvement with a trusted adult. Or, the second thing that causes them to come forward is to be confronted in a tangible and vivid way with what happened to them. One man I represented took a job in an office building right across the street from the church where he had been abused weekly for 3 years. Everyday in his office he looked at the church, everyday at noon he heard the church bells ring, until he finally could stand it no longer.

Now, often, it is not money that brings these people forward. In fact, I have had many people come talk to me who did not want to make a claim or did not want monetary compensation. Earlier this year, I had a man call me, a very sophisticated professional from the San Francisco Bay area, simply to tell me that "your client is telling the truth." He wanted me to know that the story my client was telling was identical to the story that he had experienced at the hands of this priest. He simply wanted to offer himself as a witness, if it would be helpful.

On the other hand, I make no apologies for those who come forward to make claims for money. As long as our civil justice system equates money with justice,

continued on page six

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continued from page five

child abuse victims are entitled to money, and I can think of no one more entitled to justice than child abuse survivors.

The Third Question is: Why does the Church do what it does? Actually, I should have said “why did the Church do what it did,” because I believe things are slowly changing in the Church.

But why did a Church, led mostly by men who mostly wanted to do good things -- led mostly by men who mostly wanted to do good things, which in an earthly society is about as good as it gets -- why did such a Church tolerate it? Accept it? Cover it up?

The answers fall into several categories. I think that for awhile -- decades or centuries -- there was a subculture in pockets of church institutions where abusive and exploitative sex was frequent. I have read depositions and heard stories of seminaries where bishops preyed upon young priests, young priests preyed upon seminarians, and seminarians preyed upon each other. In fact, I was recently involved in a case regarding St. Anthony’s Franciscan Seminary in Santa Barbara, California. The Seminary itself did a report in the mid-90s that concluded that in the decades previous, at least 25% of the priests or brothers on staff at that seminary had abused boys. The victims numbered in the dozens. There was simply a culture of sex abuse, repugnant and repulsive as that is to realize.

I am afraid that such pockets and such sub-cultures were more frequent than we can admit. Then, of course, the subculture spreads out to parishes and missions, the exploitation continues, the victims get younger. This raises the question of why such a culture and such conduct was “accepted” and “tolerated” by other priests, nuns, sometimes even by bishops.

Well, the answers run the gamut of human nature and culpability, from denial to sin. First, there was denial. Ask any parent or spouse of an alcoholic or drug addict. You do not want to believe that your loved one is sick. Priests, nuns, and the Church simply did not want to believe that Father might be doing such things.

Then there was incredible naivete. Pastors and bishops believed that when “Father confessed” and promised he would not do anything like this again, that the problem was solved. They treated it as if pedophilia were a one time, voluntary sexual affair, an “oops.” They thought it could be cured with good intentions, confession and penance.

Next up the scale of culpability is grievous irresponsibility. Bishops, rather than deal with “Father’s Problem,” simply transferred him to another parish or diocese in an attempt to let someone else deal with the problem. This has been documented ad nauseum this year, but it was a brutal reality.

Finally, there were outright deliberate and immoral “coverups.” It is this latter ring of the circle -- this cover-up -- that blew the lid off the issue in the last year in the national media and has created actual scandal. Before January 2002, the general public knew that sometimes a priest would molest a kid. The general public knew that sometimes a foolish bishop would transfer a priest. But the general population, and certainly rank-and-file Catholics, did not know or believe that the Church hierarchy, at least portions of it, was engaged in a deliberate institutional cover up. This is what got the attention of the national consciousness recently. This is what is news. This is the “crisis.”

So, what is going to happen? How is this drama going to end? Well, there are some hopeful signs. For perhaps a decade, the Church has been engaged in much more aggressive screening and supervision of new and potential priests. And the Church, I think it is fair to say, now has in place a zero-tolerance policy for current or recent child abuse. The Church has come to offer counseling, apologies, and even occasionally to offer early financial settlements, all as a way to simply “do the right thing” by the victim.

Now, granted, some of this is because, for the last 10 or 15 years, the Church has been getting drubbed in the courtroom. Three years ago, a jury in Dallas awarded \$125 million dollars in punitive damages against the local Archdiocese. The same is true around the country. Perhaps, to that extent, the Church and its insurers have begun to learn their financial lesson.

Still, the former secrecy will not forever be a thing of the past unless good Catholic women and men take a stand. They must continue to say to their Church: “It must stop.” I realize that the Church is not a democracy, but I believe, as I think Catholics believe, that the Holy Spirit speaks through the faithful. So, I hope that rank-and-file Catholics say to their Church: “This is the Holy Spirit speaking. Enough is enough.” I hope they remind the Church that the same Master who said “suffer the little children to come unto me” also said “it would better for a man to have a millstone about his neck and be cast into the sea than to cause one of these little ones to stumble.” For the sake of these victims, for the sake of the faithful, and for the sake of the Church itself, I hope the Church is listening.





Post-Election Thoughts

By Kelly Clark and Ross Day

Most of the dust has settled. The new political landscape is apparent. The outcome of the November elections, both nationally and regionally, is now in the history books. What it all means, however, is not yet so clear. So, from the “Whatever It’s Worth Department” (aka the Peanut Gallery) here are some ruminations about the recent elections.

First, the basic results:

1. Nationally, President Bush and the Republicans made historic gains, picking up three seats in the House of Representatives, retaking the U.S. Senate, which for the first time in half a century, gives the GOP simultaneous control of the White House and all of the Congress. The margin in the House is now 226-206-3; in the Senate 51-46-1 (with two races still undecided).

2. Republicans prevailed in gubernatorial races and congressional races that the pundits thought would either be too close to call or would go to the Democrats. For instance, in Florida, Jeb Bush was thought to be in a tough race but won by a large margin. The GOP likewise won hard-fought races in North Carolina, New Hampshire and Missouri, and even in races where the Democrat won (California, Oregon, Arizona), the margin was closer than expected.

3. In Oregon the Democrats fared better, with Governor-elect Kulongoski fending off a surprisingly strong challenge from Kevin Mannix, with the Democrats maintaining four of the five Oregon congressional seats, and splitting the difference with the Republicans in the State Senate, which is now deadlocked at 15 - 15. Republicans did pick up seats in the State House, and now have a 35 to 25 margin there. U.S. Senator Gordon Smith easily beat back a challenge from Secretary of State Bill Bradbury.

4. Of the controversial ballot measures in Oregon, both judicial reform ballot measures, “None of the Above” and Judicial Districting, failed -- the latter by a close margin; Genetic Food Labeling and the Universal Health Care Plan, both darlings of the Left, failed miserably; the minimum wage increase passed narrowly.

Those are the basic results. Some observations:

First, President George W. Bush did very well. At no small political risk to himself, he campaigned vigorously for Republicans all around the country in the last month of the election, and did so knowing he was fighting history. It is virtuously unheard of for the President’s party, in an off-presidential election year, to pick up seats in the Congress. The President,

who seems to continually delight his supporters and baffle his critics by his political judgement and confidence, took a high stakes gamble and won.

Secondly, the Democrats nationally, by their own admission, were and are in disarray. They seemed never to hit on a consistent campaign theme. Between trying to make the economy, and not national security, the top issue, yet still speaking with a divided voice on national security, they seem simply to have been confused themselves, and so confused the voters, about what exactly they stood for. It is in many ways reminiscent of the inertia and vertigo that overtook Republicans in the 60s and 70s, when they appeared to be the “me too only less of it” mirror image of the Democrats.

Thirdly, in Oregon, the best consistent theme to explain what happened is that the Establishment got its way. Kulongoski -- clearly the candidate of the political Establishment, particularly as compared to Kevin Mannix -- won. The perceived radical ballot measures, both of the Left and of the Right, lost. And in close legislative races, the candidates perceived as more willing to take on the Establishment (Republicans Bob Tiernan and Bill Witt come to mind) were defeated. Even the election of Gordon Smith over Bill Bradbury can be explained by this dynamic: Senator Smith, while doing a good job of motivating his base, also clearly ran toward the Center.

Next, third party candidates remain important in Oregon elections. This is another clear message from these elections. Tom Cox, Libertarian, pretty clearly cost Kevin Mannix the Governor’s race, even though Cox only received about four percent of the vote. One wonders what the outcome of gubernatorial election would have been if, say, Lloyd Marbet on behalf of the Green Party had run. Likewise, legislative candidates such as Keith Parker in Beaverton, an outstanding moderate Republican, lost by a whisker (43 votes), probably because of the presence of a Libertarian. The fact that even Lon Mabon and the Constitution Party got two percent of the vote in the U.S. Senate race makes clear that third party candidates make a significant difference. Republicans must take the Libertarians seriously and Democrats must take the Greens seriously.

Finally, Independents continue to play a significant role in Oregon. Close to 20% of the voters in the State of Oregon are not affiliated with any political party. Frequently these voters are deliberately and fiercely non-aligned. If it is true in Oregon that

continued on page eight

continued from page seven



Mark P. O'Donnell



Kelly W.G. Clark



Matthew D. Lowe



Ross Day



Kristian Roggendorf

“politics is played between the 40 yard lines” -- 40% of the vote generally tending towards the Republican candidate, 40% of the vote generally tending toward the Democrat candidate, and the race being decided by the middle 20% -- then the majority of this 20% are the independent voters. It is staggering that both parties in the last 15 years have cut independents out of their primaries, in the face of clear polling data that show allowing independents to vote in a party primary often results in tying those independents more closely to that party.

In summary, now that the campaigns are over, the question, as always, remains: Can the successful campaigners govern? Can Governor-elect Kulongoski take his diverse record of public service and turn it into solutions for Oregon's pressing problems? Can the Republicans, here and in Washington D.C., make the transition from the simplistic slogans of the campaign trail to the complex task of moving an agenda? Can the victors govern? On this much depends.

O'Donnell & Clark bids farewell to Ross Day

Mark O'Donnell, Kelly Clark and all the attorneys and staff at O'Donnell & Clark congratulate associate Ross Day, as he leaves to take a position as Director of Legal Affairs at Oregonians In Action, the largest property rights group in Oregon. Ross will bring Oregonians In Action a terrific combination of political instincts and skills. We will miss his talent and great personality, but look forward to years of continued friendship.

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 Tax-Free Exchanges and Real Estate Financing
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