

Please join us
Sunday, October 26
at our Annual Awards
Luncheon
as we honor
Bernard Brown, the
2008 recipient of
NCLC's Vern
Countryman Award

This award honors the
accomplishments of an
exceptional consumer
attorney who, through the
practice of consumer law,
has contributed significantly
to the well being of low-
income consumers.

Former Countryman Recipients

Mallam J. Maynard
F. Paul Bland
Irv Ackelsberg
Gail Hillebrand
Dan Hedges
Joanne Faulkner
Lynn Drysdale
Richard Rubin
Kathleen Keest
Alan Alop
David Ramp
Elizabeth Imholz
Jim Sturdevant
Pat Sturdevant
Mike Ferry
Bill Brennan
Carolyn Carter
Margot Saunders
Henry Sommer

The National Consumer Law Center
is proud to present

Bernard E. Brown

with the 2008
Vern Countryman Award

It is NCLC's honor to present Bernard Brown with this year's Countryman Award. He is one of the most eloquent members of the larger community of consumer lawyers. Eloquent about the cause of justice; eloquent about the role this community should play in the nation; and eloquent about the special place of NCLC. Bernard has built a unique practice focusing especially on car dealers who sell salvaged cars to unknowing consumers. He is also an outstanding trial lawyer who has helped many members of our community prepare for trials and build up their own car-focused legal practices. Bernard was the founding co-chair of the National Association of Consumer Advocates. Our community of consumer attorneys is all the better for his commitment, his determination, his integrity, his leadership. - Willard P. Ogburn, Executive Director

Brown's colleagues describe his devotion to his fight for consumer justice.

Two former Countryman winners, Dick Rubin and Joanne Faulkner, describe Brown's focus on the excesses of the used car industry: "Bernard has set the standard...for combating the scourges of odometer fraud and the sale of undisclosed rebuilt wrecks. His string of successful and significant jury verdicts against car dealers is legend. Bernard has litigated cases that have both meted out individual justice and established the precedent on which we all now rely.

"Bernard has had the vision and the energy to expand his efforts beyond the courtroom. He has worked tirelessly over the years with the media to expose autofraud. He also labored in the halls of Congress and his State legislature to further try to bring basic honesty to the sale of cars.

"He was also one of the founding members of NACA and volunteered countless hours at NACA's most formative stage as a guiding force and as its initial co-chair...Bernard has given freely as a generous trainer and devoted mentor."

DeVonna Joy shares her high regard for Brown: "Bernard has been a tireless advocate for consumers in the auto fraud area. He is well-recognized nationally as a champion for consumers, vindicating their rights and obtaining large punitive damages awards by showing pattern and practice to a defendant's fraud."

In nominating Brown for the Award, Bob Eppes describes his first meeting with him more than 20 years ago "...Mr. Brown apparently had taken some sort of personal vow, to serve and fight...to deter car dealers from cheating the American public....I asked Mr. Brown if he had a big staff. Bernard looked me in the eyes and calmly said 'no.' I asked him if he had plenty of funding to finance his battle. Bernard...humbly said 'no.' I asked him if he had rich clients to pay the expenses and Bernard again calmly said, 'No, most of them are just plain hard working folks who have been cheated.'

"Finally I leaned over and asked him candidly, 'Mr. Brown, just tell me how in the world you are going to revolutionize and reform this corrupt segment of the industry if you have so few resources?' Bernard paused, looked me in the eyes, smiled and stated, 'I have a voice, I have a pen, and I have my knowledge of the law! I am going to make sure some changes take place!'"

Transcript of Bernard Brown's Countryman acceptance speech (edited for clarity)
(October 26, 2008, at the National Consumer Rights Litigation Conference, in Portland, Oregon)

Thank you. Thanks a lot.

I told my girlfriend this wouldn't bring tears to my eyes. I was a little bit mistaken.

If people you really respect and admire, who know your work and know you, say "good job," that's a compliment anybody would want to earn. This group – NCLC, our assembled consumer advocates here – these are exactly the people from whom I would want a compliment like that. I've said for many years, honestly, I have never really been comfortable, I've never felt at home, in a room full of lawyers, except at the NCLC conferences. I find myself in conflict too much with the values of most lawyers. I may feel OK about them in some ways, and I try to be flexible to appreciate them. But here in this room we have a group of people who are family to me. I feel like I am among friends, I'm among people I really respect and admire. And I know that when the rubber meets the road, they are out there doing good stuff. There are lots of stories you never hear about their work. This compliment is moving to me, it humbles me, and I am very much honored. Thank you.

I told Will that, in gratitude, I'd be brief. I've been to all seventeen conferences now, and we can run on when we talk. But of course, being a good practicing attorney, I decided I'd break my promise. I have a lot of things I'd love to say. I am trying to select some of the best ones.

Let me talk a little bit about our history.

In 1992, when the first NCLC conference happened, I'd been practicing for twelve years. Rob Bramson just now was trying to make me look not as old as I am, but I actually had hair back then. I had been practicing since 1980. I'd been doing consumer stuff pretty much exclusively since 1982. When I went to law school, that was where I was headed. It's always been obvious to me that you would get real job satisfaction from working on cases where there has been cheating or people have been abused.

In 1992 NCLC beat the drums and put together this conference. Bob Hobbs, Will, Kathleen Keest, and Jon had seen a lot of consumer attorneys get out there, try to practice, try to make a living, but not succeed, and fail financially. They were disturbed. They pulled together a bunch of people who *had* managed to make a living practicing consumer law. Some of us, like me at that time, were standing as examples of consumer attorneys who had succeeded. You can practice law doing the right thing and make a decent living.

And, I'll pause to say, send that message to every law student out there: It is doable. This room of consumer attorneys, and NCLC, are a big part of what makes it doable. You can do that. Don't let anybody tell you that you have to sell out to make a living.

So they pulled together that conference in 1992. I will never forget being there, standing in this room, and looking around at all these people. This was before emails and all of this rapid communication. We didn't know each other. It was spectacular. I'd always used the NCLC books, I treated them like the gun you have in your holster. "O.K., draw!" That was the tool I used, working on my own. But NCLC first pulled us together at that conference. We got together in a room. We had nineteen people, looking at each other saying, "This is

really dumb. We need an organization.” We got nineteen people to pledge a thousand dollars each. We didn’t sign the papers until 1994, but it was at the 1992 conference when NACA actually got started.

Since then I’ve been all the more deeply involved in this community. It’s not at all a surprise to me to see NACA now having over 1500 members. My perspective at that time was very much the same as it is now. I had spent a year in Washington D.C. in 1990, really interested in consumer advocacy and think tanks, meeting people at Public Citizen’s litigation group and all kinds of other advocacy groups. I thought then, and in 1992 when we started NACA, that Ralph Nader and groups like Public Citizen, and a few other out-gunned out-manned consumer groups, had been carrying the torch. And they needed fresh blood. I thought that one of the biggest things we could do would be to bring in more people to help carry the torch. So I was thinking that way when we started NACA.

I thought then, and think now, that NCLC was amazing. The books were the best work as a reference in any area of law that I had ever seen; that remains so to this day. This is an amazing shelf of books. The NCLC people were a bunch of monks who didn’t self-promote at all. Is this not the most un-self-promoting bunch of people you have ever met in your life? When you looked at their spectacular work, and yet you saw that they didn’t self-promote – that was all spectacular, and it remains so and is even better now. We’re looking at NCLC with a new building now, and branching out in its work. It is doing some actual litigation work, with people like Stu Rossman leading the charge, and it is providing expert support in many areas in consumer law. This all has flowered, but it is just more that has come from those same qualities of NCLC I saw all the way back then. I stand here and say, “NCLC, a toast.” This is really something else, all due to you.

At the time we started NACA, when we had that first meeting, I thought, and I believe now, that a highest and best purpose of NACA was to be supporting NCLC. NCLC has some special things going for it. First, in addition to that incredibly long history, it has credibility built up from all those years. Second, because they are not ordinarily making money from litigation, they don’t have the image problem of being attorneys who make their money by bringing their lawsuits. That enhances their credibility. Third, they’ve shown how they handle money – beautifully. Every penny that has gone there has been used so well. I believe that a highest and best purpose of NACA is to provide support for NCLC, to be a voice for NCLC. That was a first purpose we had in NACA: we knew they would not promote themselves much, but we could scream, we could tell the world about them. I love doing that, and I think that is one of the best things we can continue to do.

I’ll broaden that out: I think consumer groups generally need to give more support to each other. During the year I spent in 1990 looking around at the advocacy groups in Washington D.C., I was dismayed. In the consumer advocacy world we have seen a lot of turf grabbing. We’ve seen competition for funds, we’ve seen groups “not playing well together,” as Ira will say. It’s understandable. But it has been a problem. I like to think we’ve got some good things going now, some real improvement. I’ll have one anecdote to tell about that a little later on. But that is something I saw all the way back in the early 1990’s.

I think mutual support needs to be a foundation stone of consumer advocacy. If you believe in the purposes we are working for, you should be generous in terms of relationships with other advocacy groups. Let’s give credit to others. Let’s not play for turf. I hate seeing competition for funds. Let’s get funds, but frankly, between NACA and NCLC, I want to make absolutely sure NCLC gets funds. And I want to see money spread around. We can get money and spread it around among the groups. Coordination, cooperation, the suppression of egos among the groups, these are all important. As a theme for everyone in this room, going forward, I urge the conscious effort to hold egos down, and to build up and support other consumer groups. We

should look for which groups are the best ones to lead. Groups have expertise on different issues. We need to put the best groups out front on each of our issues. But that is what I was thinking when we started NACA, and that is what I am thinking now, in terms of relationships among the consumer groups.

One last comment on this: Money is a two-edged sword. We certainly see this in politics. Everyone in this room is distressed about how campaign money can corrupt politicians, who have to fundraise all the time. Consumer groups also have to fundraise all the time. The consumer groups' staffs will have their interests. Money can become an end in itself.

I can't imagine how NCLC has managed to be so good all these years at using the money it has received to do really good work, except that it is a tremendous compliment to the people in the institution. They have carried that passion forward and have used money really well.

But – just as Eisenhower warned about the military-industrial complex concern – I want to flag this as something that needs eternal vigilance from consumer groups and other advocacy groups. Money can end up being an end in and of itself. This speaks to the need for all of us to be generous with our contributions to the consumer groups. If money comes from us, without strings attached, that can help lessen pressure for fundraising. That is a heckuva good reason to be contributing every way you can. But all of our groups need to keep a real close eye on this. If we are not totally devoted to the object, it is easy to slide down that slope. Watch where you get money from, watch your associations. We've got to keep ourselves reasonably pure, we have got to keep our credibility up, or we won't be able to get our good work done.

Now I'd like to say a few words about what I understand "consumer advocacy" to be.

If you go on the internet and search on Google for things relating to "consumer," you will actually find quite a bit of discussion by people who disdain "consumerism." I couldn't agree more with that point of view. "Consumerism" has a connotation we have to watch. A lot of people, when they hear of "consumer advocacy," will mix it up in their minds a little bit with "consumerism," and think that it includes encouraging people to "get as much as they can." That's not what we are about. But we have to watch this, and articulate this difference. If only we had a better word than "consumer" advocacy, that would help. All the way back when we named NACA, we went through a list of possible names. There wasn't going to be a good name that said, "National Advocates for Ordinary Individuals Who Work Hard and Play by the Rules and Then Get Cheated." I don't remember what that acronym would have been, it should have been wonderful. But *that* is who I believe we are. That is what I understand our "consumer advocacy" to be.

We are not a trade group. We are not brought together merely because we happen to work on consumer cases and make our money by doing this work. I'm not interested in being part of a trade group. I never have been. I wouldn't be here if I thought that we were here together merely because this is a way that we can make more money in our practices. No – we are here working for ordinary people who try to play by the rules and work hard, and then get cheated. I wish we could have a name saying that. Somebody mentioned in the NACA meeting something about "attorneys who give attorneys a good name." "Consumer advocate attorneys, we're the attorneys who give attorneys a good name." That's a nice slogan, it fits what I have in mind.

And now I'll give some of my more personal perspective on our work, for what it's worth, and talk about "materialism."

It is an irony of my practice that I've won cases with hundreds of thousands of dollars in awards for individuals. But I'm not about getting a lot of money for individual people, that's not what I am fighting for. Unhappily, a lot of the time these large money awards end up disserving the message. If you get a \$600,000 judgment for an individual, the message the public may get is, "Great, these attorneys are all about lots of money and making people rich." That is most unfortunate. It's the opposite of the message I mean to send. And it is something to examine about our work all the time, and I wrestle with it.

I think that "materialism" – defined as wanting stuff, especially wanting too much stuff, like more cars and more houses – is not OK. I believe that the Reagan Revolution ushered in an era when it became, to my shock, acceptable to talk about wanting more and more and more of everything, to the point that people even actually were literally saying greed was OK. Look in the dictionary, folks: "greed" means *excess*. By definition, if you use the word right, and not the way it started being thrown around in the Reagan Revolution, it means *bad*. You'd rather have money than take care of your parents in a nursing home? That's greed. Excess is bad. Materialism is bad.

When I came of age, in the late 60's, early 70's, that's something I do think we had right in the hippie era days. There were a lot of things I think were wrong in those days. But one thing that was right, that has a tradition going back to forever, is anti-materialism. The people I knew made fun of the people who wanted more and more, and who dressed snazzily, who thought lots of fancy stuff was a big deal. We thought it was stupid. And I frankly feel as though that's what it is if you get too wrapped up in material stuff. You're missing all the interesting things. It's a distraction.

I believe this anti-materialist view does belong as a pillar of consumer advocacy, because I believe that one of the currents that is a cause of consumer problems – including the current mortgage meltdown, for example – *is* materialism, *is* excess in seeking profits.

How many times have we read, "The American Dream, that's what everybody wants"? People keep talking about it – at least since Reagan came in – as having a bigger house, more cars, more stuff, your own five-million-acre ranch. I have an American Dream. And that's not it. It's a society where people treat each other decently; where warmth, trust, affection, and things like that dominate, and that's how we live, and that's the kind of people we are. That's my American Dream. It's not materialistic; it's based on that kind of loving relationship among people, on good relations among people.

Where did this "American Dream" come from? I spent an evening with Ralph Nader back in 1997, a whole evening talking with him about all kinds of stuff. He spent a lot of time looking me over and asking me hard questions like, "So what makes you go? Where does this come from?" Well, it came out that my parents never cared about "things." They just didn't. My dad played Boogie Woogie and Ragtime piano, and he and my Mom named my younger brother Charlie – as in "Charlie Brown" – and my younger sister Molly – as in "Molly Brown." He's a nut case. They were interested in interesting things, and they didn't care about this stuff. Ralph said, "That's where it came from. And your mom is stubborn." And, he said, that's where it came from for him. Yes, that's right, that's where it came from for me. I have to say, I'm lucky, because I never cared about that stuff, because my parents didn't. That's a great gift. And I just want to mention thanks to my Dad and Mom. Dad's 86 and couldn't make it here today. But that's where it comes from.

This brings us back to the subject of how we should conduct ourselves as "consumer advocates."

There was a line recited by an attorney who spoke at our conference in Boston three years ago. He was quoting one of the attorneys who was a mentor of his, who was on the *Brown v. the Board* team. The line was, “If you are an attorney, either you’re a social engineer, or you’re a parasite.” That deserves lots of examination. But as for the broader concept: I think that if we do things right we will indeed be working as social engineers, as problem solvers.

And now I get to take advantage of a most auspicious happenstance. I didn’t know Joan Claybrook was going to be here today. But I will tell you an anecdote that gives an example of the kind of stuff I think we should be doing, and shows how we should think of ourselves. *Solutions* are what we need to work on.

I have been handling car fraud cases all these years. You have all heard of Carfax, the database that you can access supposedly to find out if a car’s been wrecked before you buy it. I’ve handled all these many cases for people who have unknowingly bought rebuilt wrecks and flood cars. Carfax, unfortunately, is the opposite of what you would think. It doesn’t have anything like the data you need. Nine times out of ten, if you are looking at a used car that has been wrecked, at the time the dealer is offering it for sale, Carfax will *not* show that damage. It is a fraud by itself, so you get cheated buying the carfax, and you are more than likely to get cheated buying a car because you let your guard down. This is bad.

Well, I handled all these individual wreck cases, and I wanted to see a *solution* to the problem, rather than just continuing to deal with these cases one by one. I’ve terrorized lots of dealers in my region, and I think it has made a difference, and that’s good. But it is piecemeal. If you get into social engineering, you’re thinking, “Isn’t there a solution to this problem?” I have always felt it was as if there had been a parade that went down the street, the horses have pooped in the street, and I am the guy going along cleaning up the poop afterwards. Being “poop sweeper” was not my American Dream. I’d go to a trial, and while clobbering a dealer I would be thinking, “oh come on, isn’t there something that can be done to head this off?” As I thought it through, it seemed to me that there *was* an answer in my car fraud realm: *If* consumers could actually *get* the information as to whether a car was one of these totaled cars, say, before they bought it, from a truly comprehensive database. There you go: that is an example of starting to think on the track of a potential solution.

As it turns out, back in 1992, Joan Claybrook worked on legislation that is turning out to be key to this. I just got to hear this story from her in detail a couple of nights ago, and it’s a delight. She worked with then-Representative Chuck Schumer to put together a bill called the “Anti Car Theft Act.” It had to do primarily with stolen car issues. But it had a provision in it that said insurance companies would have to hand over their data about whether a car had been totaled, and put it in a database that the law required to be accessible to the public. That data is not in Carfax. Carfax has never gotten the insurance data. That was terrific. I didn’t hear about their work at the time, I didn’t know they were doing this until a year or two later, but they were doing this terrific work behind the scenes.

But that insurance provision never got implemented. The Department of Justice never did pass the regulations to do it. I won’t tell you why it took 16 years, but it took 16 years and a law suit. Deepak Gupta – Deepak, would you do me a favor and stand? Deepak handled this case. Deepak is with Public Citizen’s litigation group, and lives in the rarefied air of the specialized work they do. They brought a mandamus action against the Department of Justice, with Rosemary Shahan and CARS, Consumer Action, and Public Citizen as plaintiffs. Public Citizen had the wherewithal to do this. I got the information to them to get started with the suit, and they followed up where Joan had started out.

About three weeks ago, they won an order from a federal judge in San Francisco, requiring the Department of Justice to publish the regulations to implement the insurance provisions by January 30th. By March 31st, they are required to have the insurance data, for the whole world to see, showing that a car has been wrecked. That step is the biggest single thing you could ask for to actually start to solve this problem across the country. And that, I think, is terrific.

I think this story stands for several things. In terms of cooperation – if you didn't have Public Citizen's expertise, like the litigation expertise that NCLC has in other areas, you couldn't have gotten this job done. But you also needed field information, from people like NACA members, which must be passed on to the people like Deepak for them to be able to do the job. And there you have successful advocacy. You're talking *solution*. By the way, if I put myself out of business, it would make my day. That is where I would like to go.

I have a few last remarks.

Alan Greenspan made his remarkable admission this past Thursday, saying that, after all these years, "Oh well, maybe we shouldn't have trusted the banks to self-regulate." It took how long? He didn't get around to it until October, what, 23rd, 2008? After how many other disasters that we had seen? I was looking at this in a news article, and the first word out of my mouth as I read it, nice and slowly, was, "*woops!*"

We now have a chance to push back. The whole religion of deregulation that was so extreme – *no* regulation? How many years have we gone to Capitol Hill and heard, "any regulation is bad, the free market solves all"? I can't believe they ever actually believed this religion, but some did. Dolores Smith was on the board of the Federal Reserve, and she says, "You know, they were sincere." A lot of these folks were sincere about it. I can't believe how emotionally defective a lot of these economists must be. I wanted all along to ask them, "Do you actually trust people who are going to make billions of dollars by overreaching and cheating, not to do that?" Where do you *get* that extreme belief? But now I think we have a chance to push back.

There are a couple of themes I would like for us to push. One is anti-materialism – not supporting materialism. Let's change society back. Back in 1965 and 1975, if you said that "materialism" and "getting rich" were great things, people would have looked at you and said you were "greedy." Can we get back to that? Materialism is not the dream.

Another is the need for a social bond, for trust. There was a terrific paper a while back – was it Alan White's paper? – that was an economic study showing that trust is at the foundation of a well-functioning economic system. People must be able to trust each other. Getting to that result includes having laws, and holding people accountable when they cheat. That is something we need. A personal, emotional, bond among us is essential to a good society.

The last thing I want to mention is something that may come as a bit of a surprise – it surprised me, really.

I'm a card carrying liberal. Abraham Lincoln was a liberal. Washington and Jefferson were liberal, I am a liberal. The word has always been mine. But I have had a lot of meaningful conversations with friends of mine whom I'd call right wing, real right wing. I've got good friends who are very right wing. I've got a

friend, my best friend in the world, who would still vote for Richard Nixon if he ran tomorrow. And I can't understand it, I can't understand it.

I think there is an important point here. It serves political purposes for parties to polarize things. In point of fact, there are a lot of people who are deeply on that right-wing side, in whom, one-to-one, I have deep personal faith. We should not have to stop to say, "Hey, wait a minute, these are good people." My friend, Dallas Martin, is a great guy, a terrific guy. And another friend of mine, a former Army Ranger, is the one who said, "All I'm saying (about the Iraq war) is 'give war a chance'." We will ride bikes together for 60 miles, throwing things at each other. But, he would give his life to do the right thing. He's decent through and through.

It's a *difficult* thing to try to listen and understand the stuff that comes from so far from our normal camp. But I believe that's our *job*. It's painful to be able to listen really well to these views. But I'll point out that a lot of right wing, social right wing, even fiscal right wing people, will often be all wound up about questions of morality. They're upset about a higher cause that they see as being undermined.

We actually have that deep concern about morality and higher causes in common with many of them. That has kind of come as an astonishing thing to me, as I've really thought it through, especially with these friends of mine. When I hear some view like "drill, baby drill!" from Sarah Palin, I'm thinking, "am I ever going to be able to agree with anything they say?" But I see that people on their side often have actual belief in higher purposes. And I think that they actually share a lot of our distresses and concerns. We need to look for those things we do share.

Oppenheimer, who ran Los Alamos, may have been a genius, but he was a sarcastic guy who cut people to shreds. He was impossible to get along with. But when he ran Los Alamos, he changed. He put a lid on it. He was an adult, and he got people who were totally disagreeing to work together. I think that kind of emotional effort is called for.

We do need to work to understand people on the other side. We need to carefully think through our own positions, and we need to listen to opposing views. We need to make whatever outreach we can to people on the other side. We need to remember, too, I think, that a lot of this polarization is to serve political ends. I don't think that this polarization has to be where we are, where we live every day. I think that we, as good consumer advocates, need to keep that in mind and work in that direction. That kind of maturity is painful, it's hard. It is so much easier to say, "They suck! That's how I feel about it." No, no, no, I don't think we can do that.

So I'll go back to work. Tomorrow I am going to the mortgage fraud intensive session. We have that tsunami to face right now. We have millions of people across the country who are standing to lose their homes or have already lost them. We have so much work on the ground to do. The legislative agenda is totally full. We are outnumbered and out-gunned. We've got to cooperate and do the work.

I hope to honor having received this award. What you did in the past doesn't matter. I hope to make this award look good by doing really good work in the future. And with the help of folks out there working together, that is going to be something that is doable. I'm quite convinced we can get there.

Thank you.