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Book Review: Ould Fields, New Corne: The Personal Memoirs of a Twentieth Century Lawyer

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BOOK REVIEW

OULD FIELDS, NEW CORNE: THE PERSONAL MEMOIRS OF A TWENTIETH CENTURY
LAWYER. By ERWIN N. GRISWOLD.¹ West Publishing. 1992.
Illus. 444 pages. \$27.95.

Reviewed by Bradley S. Le Boeuf²

Former Buckeye Erwin Griswold warns the reader early in his autobiography about the dilemma of writing a book devoted to retelling his life. In the first page of *OULD FIELDS, NEW CORNE: THE PERSONAL MEMOIRS OF A TWENTIETH CENTURY LAWYER*, he writes, "It is inherently egocentric." Although first person narratives are always self-centered, Griswold, the former dean of Harvard Law School and Solicitor General of the United States, has written a very modest account of his role in shaping American law.

Despite *OULD FIELDS, NEW CORNE* being a book by a lawyer about lawyers and the legal community, it is not wholly intended just for a law-trained audience: The title, while seeming to be a book about hillbilly humor or pioneering agricultural practices, alludes to a quote from Sir Edward Coke's 16th century *Commentaries*: "Out of ould fields must spring and grow the new Corne." The anecdotes about academia, world travels, Supreme Court practice and presidential politics are spread among the tales of the legal world to relate an accessible story by one of America's living legal legends.

Griswold was born in 1904 in East Cleveland, Ohio. He lived in Ohio throughout his youth and graduated from Oberlin College in 1925 with majors in political science and mathematics. He considered pursuing a career in astrophysics, but opted instead to attend law school at Harvard. Griswold decided "that the chances of making a living in astrophysics were less than those of making a living in law."

Griswold's freshman year studying at Harvard Law School was a pivotal point in his life. After earning straight A grades for his first year of coursework, he ranked second in his class. "I could not foresee what a change this was going to make in my life," he writes, unaware that his early success at Harvard would transform him from a midwesterner to a major player in the eastern legal establishment.

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After graduating from Harvard Law School in 1929, Griswold returned to Cleveland to begin practicing law with his father's firm. (Griswold's father, James Griswold, graduated in 1901 with a L.L.B. degree from the Law School of Case Western Reserve University. The senior Griswold earned his way through law school "by tutoring, and also by making Saturday and Sunday addresses for the Anti-Saloon League.") The apprenticeship was short-lived. Within four months, Griswold accepted an invitation to join the staff of the Solicitor General's office in Washington, D.C. He soon found himself arguing tax law cases before the U.S. Supreme Court, although he had never enrolled in a tax class. In fact, no federal tax courses were offered at Harvard while he was a student there.

Griswold worked at the Solicitor General's office for five years before returning to Harvard to join its law school faculty in 1934. After teaching for a dozen years, Griswold was offered the position of Dean of Harvard Law School. He was reluctant to accept the job for fear of becoming too immersed in administrative matters and thus being unable to devote enough time to teaching and legal research. Griswold's apprehension was accurate. In addition to his usual teaching duties, he found himself haggling over cramped office space, negotiating faculty squabbles, and dealing with the constant demands of fundraising for the university.

One of the most significant accomplishments of Griswold's tenure as dean was the admission of women to the law school. Harvard first admitted women to the law school in 1950. Griswold favored admitting women to Harvard, commenting, "From my experience as a student in a co-educational college, I told the faculty that the women would be just as good and just as bad as men."

Yet it is somewhat ironic that while Griswold was a major impetus behind the admission of women at Harvard Law School, he became a member of Burning Tree, an all-male golf club in suburban Washington, D.C. Griswold explains the inconsistency: "Perhaps it is because of my early experience at a boys' camp, but I do not find invidious discrimination in a place where men can get together for mild physical activity without the restraint which men feel, rightly or wrongly, in mixed company."

In 1967, he received a phone call from the Attorney General asking if he would accept President Lyndon Johnson's offer to become Solicitor General. Griswold took "fifteen agonizing seconds, and said yes."

As Solicitor General, representing the government in Supreme Court cases, Griswold was faced with the perplexing responsibility of determining who exactly was his client and which position he should advocate in federal court. This problem was particularly evident when two or more governmental agencies held differing views about the same issue. As an advocate before the Supreme Court,

Griswold regarded "the United States" as his client and attempted to advance the "over-all interest of the Government."

After the election in 1968 of Richard Nixon as President, Griswold expected to be relieved of his duties as Solicitor General with the change to a Republican administration. Nixon, however, allowed Griswold to remain in office until 1973. As a holdover political appointee from the Johnson presidency, Griswold acknowledges the pressure of reconciling positions taken before the Supreme Court and fulfilling Republican administration policies. "From time to time I adjusted my views, and, more frequently, my phraseology, to meet points made by my superiors." Also lurking among his high court writings and arguments was the possibility of being fired: "If the President thinks that he is not sufficiently 'political,' he can always be removed. That is the inevitable professional hazard of the Solicitor General."

Griswold devotes the greatest details of his years as Solicitor General to a discussion of the Pentagon Papers case. He regards the 1971 Supreme Court opinion, which upheld the right of newspapers to publish the purloined Pentagon Papers, as "Undoubtedly, the most spectacular case in which I appeared." Griswold was perplexed as to why the Department of Justice was so opposed to publishing the Pentagon Papers since the reported events occurred prior to the years of the Nixon administration. Griswold believes that Nixon aide Henry Kissinger was the impetus behind the opposition. He contends that Kissinger feared that the publishing of the Pentagon Papers would reveal his influence in proposing U.S. policies during the Vietnam War as a consultant for the Kennedy and Johnson administrations.

Shortly after the Supreme Court's decision in the Pentagon Papers case, Griswold was invited to a reception at the White House. While passing through the receiving line, Griswold said to Nixon,

"Well, Mr. President, we did not do so well in the Pentagon Papers case." The result left a vivid impression on me. The President froze, and seemed to glare, saying nothing. It was, to me, a wholly unnatural sort of reaction. I said nothing more, and quickly moved on. I had, of course, underestimated the importance of the case to the President, as he saw it.

Griswold also occupies a unique place in Washington lore. Regarding J. Edgar Hoover, he writes, "In the early days after my return to the Department of Justice, I became quite notable among the other officers because I was the only one who called the Director of the F.B.I. by his middle name, 'Edgar.'"

Griswold returned to private law practice after leaving the Solicitor General's office. He joined the firm of Jones, Day, Cockley & Reavis (currently known as Jones, Day, Reavis & Pogue) as a partner, and is presently senior counsel with the firm in its Washington, D.C. office. Since Griswold's arrival at Jones Day, the firm has grown into one of the country's largest, with over 1,000 attorneys spread among twenty offices in ten countries.

Nowhere though, does Griswold mention his role as a "rainmaker" with Jones Day. He recognizes the ease of moving from the public sector to a position as a partner without having to undergo the rigors of moving up through the associate ranks, but does not directly address his financial impact on the firm.

Despite the growth and success of Jones Day, Griswold has some harsh words for the "big" law firm concept. He admits the pressure on attorneys to produce 2,000 billable hours a year sometimes creates "make-work" demands to meet annual productivity goals. A "big" firm, he notes, can only afford to take on "big" cases. "[W]ith the tremendous overhead it has, the firm cannot afford to take a matter which involves less than say, \$50,000, and even on such a case the likelihood of a net loss to the firm is considerable."

For a first-person narrative, Griswold has written an almost dispassionate account of retelling his life. Emotions are rarely, if ever, expressed. The profusion of footnotes (over 500 footnotes are spread among the thirteen chapters) adds to the impression that the book deals with cold, hard, verifiable facts and not subjective interpretations about certain personal events. Even the circumstance of his birth is reported in the context of an evidence rule: "I have no personal recollection of the event, but I feel confident about both the time and the place. Indeed, one's date of birth is one of the oldest and most firmly fixed exceptions to the hearsay rule."

Overall, *OULD FIELDS, NEW CORNE* is an interesting book about a fascinating life. Rarely can we read a book by a living author who has written of events he has witnessed occurring in every decade of a century. Unfortunately, another hundred more years may have to pass before the opportunity arises again to read another piece of Americana spanning each decade of a century.