

## Law Day 2017: The 14th Amendment And Promises To Keep

By **Stephanie Parker, Jones Day**

*Law360, New York (April 30, 2017, 11:14 PM EDT) --*

Chiseled into the marble on the west face of the U.S. Supreme Court building, perched above the bronze gates, sits the simple phrase: “Equal Justice Under Law.” Chief Justice Charles Evans Hughes quietly approved the inscription in 1932, roughly halfway between *Plessy v. Ferguson* (1896) and *Brown v. Board of Education* (1954). Like so many others in our Nation’s history, the phrase was thus written as a great and noble promise, but one that had not yet been fulfilled. It stood then, as it stands now, as both a powerful inspiration and an indelible reminder of the essential link between equal protection and the rule of law — a connection that might be ignored, but cannot be erased. On this Law Day 2017, which the American Bar Association has marked to celebrate the transformational effect of the 14th Amendment on American democracy, it is important to remember the contributions of a giant in the legal profession, Erwin Griswold.



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While many lawyers have since passed through the Supreme Court’s doors, few have embodied the twin ideals of equal justice and the rule of law as effectively. Griswold’s career took him from the academy to the government to private practice. He served as both the dean of Harvard Law School and the solicitor general of the United States before becoming a partner at Jones Day, where he continued his Supreme Court advocacy. Griswold chronicled the experiences of his career in his memoir, “Ould Fields, New Corne.” The title comes from a phrase in the preface of Sir Edward Coke’s *Commentaries*, which was written in 1600: “Out of ould fields must spring and grow the new Corne.”

In the memoir, Griswold provides a personal account of the events that he witnessed in the growing civil rights movement, starting in his days as a Harvard student in the 1920s. The last event described in the book is a birthday party for Justice Thurgood Marshall, hosted in 1988 at the home of William T. Coleman Jr., the longtime civil rights advocate and cabinet member for President Gerald Ford. Griswold recounts how, in the course of “after dinner remarks,” “Justice Marshall very generously referred to me, saying that I had been willing to come to his aid at a time of need, and that this had been of great assistance in his work” as a civil rights lawyer.

Somewhat surprisingly, the primary “aid” that Griswold provided to Marshall was not in his capacity as a lawyer, but rather as “an expert witness in cases involving legal education.” In particular, as a leading figure in the legal academy, Griswold was called to testify to the many reasons that, contrary to *Plessy v. Ferguson*, “a separate law school could not be equal.”

Griswold paints a vivid picture of both the segregated law schools that he testified against and the towns where he testified. In one instance, he took an “overnight train” from New York to Durham, where he was met by Thurgood Marshall and his “chief aide,” Spottswood Robinson, who then snuck him “down [an] alley” and “through the kitchen into a restaurant” so that they could have breakfast together — a forbidden act that would have caused an uproar in the segregated South if they had been spotted. In another episode he describes the supposedly “separate but equal” law school for black students in Norman, Oklahoma, which had “two students, no full-time faculty, and no library.”

Though the eventual triumph of the desegregation movement in *Brown v. Board of Education* now seems inevitable, the result looked far from assured at the time. Griswold recalls a 1948 meeting between Marshall and a group of faculty at Harvard Law School, where the question on the table was “whether the time had come for a frontal attack in the courts on the constitutional basis for segregated education.” The faculty members were committed to the cause of desegregation but the majority of them, including Griswold himself, believed that it was “too soon,” and that “it would be wise to build up a group of decisions” first. If a premature challenge was launched in the Supreme Court, “and was unsuccessful, the cause would be set back for a great many years.”

With due respect for the advice of the Harvard faculty, Thurgood Marshall decided that the time had come. At his urging, on a spring morning in 1954, the Supreme Court at last put an end to the rule of *Plessy*, declaring by unanimous vote that “separate educational facilities are inherently unequal.” Consciously or not, that epic holding under the 14th Amendment echoed the traveling testimony of Erwin Griswold. On this Law Day, as we celebrate the transformative effect of the 14th Amendment on American democracy, it is fitting to remember the legacy of Griswold, who played his own small part in helping the court — and the country — live up to the promise that was written above its door.

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