

Legal Scholar Recalls Creating Federal Register 50 Years Ago

By **JOHNE E. BYRNE**

WASHINGTON — There is a saying that a generation raised with central heating has difficulty appreciating how cold it was without it.

Despite the July heat, this came to mind recently when I called on Erwin N. Griswold in his Washington law offices to talk about the 50th anniversary of a Washington institution which he was instrumental in founding: the Office of the Federal Register.

"I was a young government lawyer in the early 1930s," said Griswold, who turned 81 last month. "I had a case involving criminal prosecution for selling underweight feed. Moisture affected the weight, so reasonable tolerances as determined by the secretary of agriculture were allowed.

"I went looking for the regulations. At an office in the Department of Agriculture someone said 'Oh, yes. They're over there in a drawer.' I looked and found loose, typed papers which were amended in long-hand without dates. Here I was dealing with a criminal prosecution. I came away convinced that there had to be a better way."

Griswold is now in private practice after a distinguished public and academic legal career that included service as solicitor general of the United States (1967-73) and

dean of the Harvard Law School (1946-67). He said these paper hunts were the rule for those trying to find out the status of federal regulatory law before President Franklin D. Roosevelt signed the Federal Register Act of July 26, 1935.

'Hot Oil' Cases

Griswold also talked about the so-called "hot oil" cases which had embarrassed the government.

The government had cases before the Supreme Court involving the alleged violation by certain oil companies of rules for oil quotas — only to find that a key provision in federal regulations had been rescinded accidentally for the period at issue.

The incident strengthened the growing conviction of many federal officials, elective and appointive, that more orderly procedures were needed.

Griswold left government to join the law faculty at Harvard in 1934, and in that year he published an influential article in the Harvard Law Review. Entitled "Government in Ignorance of the Law — A Plea for Better Publication of Executive Legislation," it served as a rallying point for those interested in establishing a system of orderly publication of federal regulations with the effect of law.

Rep. Emanuel Celler of New York, a

member of the House Judiciary Committee who introduced and championed the Federal Register Act, would testify that he did so after reading Griswold's "illuminating article."

There were other allies. Griswold credited Assistant Attorney General John Dickinson and Judge Harold M. Stephens of the U.S. Court of Appeals for the District of Columbia with important roles. The American Bar Association went on record in favor of improved accessibility to federal regulations through central filing and orderly publication.

President Roosevelt, Griswold recalled, was chary about "getting the government involved in the newspaper business." FDR's reservations were satisfied by language in the bill which specifically excluded "comments or news items" in the Federal Register.

Thus, July 26, 1935, was the day that federal regulations came in from the cold, although it took some time to organize the new office and the first Federal Register did not come off the press until March 14, 1936. It has been published five days a week ever since.

The new office was placed in the National Archives Establishment, which later became the National Archives and Records Service of the General Services Adminis-

tration. On April 1, 1985, it returned to independence as the National Archives and Records Administration.

Griswold and I talked briefly about the development of Office of the Federal Register functions over the years since 1935 through statutory and administrative changes:

- Publication of an annually revised Code of Federal Regulations, which the daily Federal Register updates;
- Expanded requirements for publication in the Federal Register;
- The annual United States Government Manual;
- Publication of the "slip laws" — individual laws in pamphlet form — and the United States Statutes at Large;
- Publication of presidential documents in weekly and yearly editions.

"Logical developments," said Griswold. He paused for a moment, reflecting. "One of the arguments of opponents to the Federal Register Act 50 years ago was that there wouldn't be enough material to print on a regular basis."

John E. Byrne, the current director of the Federal Register and the fourth since 1935, wrote this article for United Press International.