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Book details overlooked Marshall case

Here's a sobering thought. Most law students today were not alive at any time when Thurgood Marshall served as a justice on the Supreme Court.

As someone who grew up at a time when Marshall was a household name, I have to remind myself of this when I teach a law school class. Stories that were "current events" to me — *Brown v. Board*, Selma, the Civil Rights Act of 1964 — have passed into the mists of history.

But some stories must be retold to a new generation. And that is why I was so pleased to see a long-shot book win this year's Pulitzer Prize for general nonfiction: Gilbert King's "Devil in the Grove: Thurgood Marshall, the Groveland Boys and the Dawn of a New America" (Harper, 2012).

I would recommend it not only to every lawyer, but every American. And it is an absolute must-read for anyone too young to really know who Thurgood Marshall was.

I thought I knew Marshall's career fairly well from reading Juan Williams' excellent biography from a decade ago. But King's book deals with a criminal case that I had no knowledge of — "The Groveland Boys," a Florida rape case of 1949. King, who describes himself as an amateur historian, says that Groveland "wasn't really covered in a lot of the Marshall biographies, which tend to treat his criminal cases as footnotes. His clerks knew all about it, though, because he always talked about it when he recalled the old days."

It is clear to see why. It is the story of four black men falsely accused of raping a 17-year-old white girl. But it unfolds like a production of "To Kill a

Mockingbird" directed by Quentin Tarantino.

At the center of the story is an evil-personified Southern sheriff named Willis McCall. King describes him — for the benefit of those of us over 60 — as making "Bull Connor look like Barney Fife." McCall ran Lake County, Fla., as his personal fiefdom for more than a quarter-century.

And McCall worked out a lucrative scam. Lake County in the 1940s was the birthplace of a company that invented the concept of frozen orange juice; the company would become known as Minute Maid. Much of the back-breaking picking of oranges was done by abysmally paid black workers.

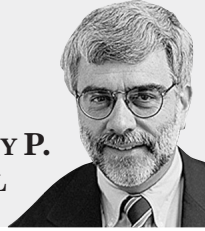
Some black workers rebelled at the hard-work-for-low-pay regime in the Minute Maid groves and simply walked off the job. If they did, however, the grower-friendly McCall arrested them and charged them with vagrancy. They were then tried, convicted and assessed exorbitant fines. Those that could not pay the fines were sent to jail.

At this point, Minute Maid foremen would tell bail bondsmen how many men were needed to work. The bail bondsmen then used money supplied by Minute Maid to pay the fines and bonds to get that number of men out of jail. The men then had to work to pay off what they owed Minute Maid. Armed guards prevented them from escaping. You could compare it to a chain gang in "Cool Hand Luke." You might also compare it to a form of post-World War II slavery.

Enter Norma Lee Padgett, a 17-year-old blonde. She accused four black men of raping her. (Spoiler alert: They did not.) If this situation sounds familiar, you should know that the press

CRIMINAL PROCEDURE

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referred to Groveland as "the Little Scottsboro case."

Younger readers should be reminded that at this time rape was a capital offense throughout the South; it was until 1977 that the U.S. Supreme Court found the death penalty for rape to be unconstitutional. And Southern prosecutors invariably asked for the death penalty only in cases where a black man was accused of raping a white woman.

In Marshall's words, the death penalty for rape was "more consistently and more blatantly racist in application than any other in American law."

Yet for a black man accused of raping a white woman in Florida, the death penalty may have been the least of his worries. Consider this: from 1882 to 1930, Florida recorded more lynchings of black people — 266, to be exact — than any other state. Or this: From 1900 to 1930, Florida had a per capita lynching rate twice that of Mississippi, Georgia or Louisiana. This led one historian to conclude that "a black man had more risk of being lynched in

Florida than any other place in the country." Being tried in court was not nearly as dangerous for a black rape defendant as trying to get to court.

Not surprisingly, Marshall had the NAACP Legal Defense Fund get involved with the trial. And, not surprisingly, the story eventually results in a victory in the U.S. Supreme Court. But if, like me, you expected the book to end with the Supreme Court victory, you are in for a shock. The Supreme Court victory actually occurs in the middle and is merely a prelude to some tragic twists and turns that defy belief.

This book is yet one more reminder of Thurgood Marshall's pre-eminent place in American legal history. He argued 32 cases before the U.S. Supreme Court and won 29. He invalidated racially segregated schools in *Brown* and eliminated restrictive covenants in *Shelley v. Kraemer*. In the criminal area, he won several important cases relating to both the death penalty and the use of involuntary confessions.

But what is sometimes forgotten is the incredible courage both he and the other NAACP black lawyers showed in traveling throughout the Jim Crow South and trying cases in courthouses both large and small. Often, the NAACP lawyer was the first black lawyer to ever appear in a particular courthouse. Always, the black lawyers faced real physical danger.

In 1947, when the first black major league baseball player needed legal help, Branch Rickey sent Jackie Robinson to Marshall. The recent movie "42" was a much-needed retelling of Robinson's story. Similarly, "Devil in the Grove" makes us once again appreciate the enormous debt Americans owe Marshall.