

Devil in the Details: Gilbert King on Truth and Transparency in the Judicial Process

November 20, 2019



Attorney David Karp and Pulitzer Prize-winning journalist Gilbert King, author of *Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of a New America*, discuss the importance of access to historically significant grand jury records in the quest for truth and reconciliation in our

criminal justice system. David wrote [an amicus brief for King and the First Amendment Foundation](#) on the subject in a case before the U.S. Court of Appeals for the Eleventh Circuit involving grand jury records about a 1946 unsolved lynching of two African American couples in Georgia.

Transcript:

David Karp: Hello. My name is David Karp. I'm an appellate lawyer at Carlton Fields in our Miami office, and I'm joined today for a conversation with Gilbert King. Gilbert is an author of three books: *Beneath a Ruthless Sun* which came out in 2018, *Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of the New America* which won the Pulitzer prize in 2013, and *The Execution of Willie Francis* which was published in 2008. He's also written in many publications including *The New York Times*, *The Washington Post*, and *The Atlantic*.

So we're thrilled to have Gilbert here today for a conversation about a case that we worked on together called *Pitch v. United States of America*. And the *Pitch* case is pending in front of the full 11th Circuit en banc right now. And it's a case about the federal court's inherent authority to release Federal Grand Jury records of exceptional historic importance. And I'm going to turn it over a little bit to Gilbert to tell us a little bit about what this case is about and what the historical event that's at issues in the case is about.

Gilbert King: Thanks, David. It's great to join you. I was really following this case. I was very interested in it because it definitely touches on something that I've had to deal with over the years when I file a Freedom of Information Act request or I've always wanted to get my hands on grand jury testimony because I recognize it's sort of important to getting to the bottom of some of these, you know, murders and lynchings. So as a historian, as someone who studies this, you sometimes get a little frustrated because you know that the investigations and the grand jury procedures, that many of the answers are in that courtroom and in those transcripts, and as a researcher, it kind of drives you crazy to not be able to get your hands on them. This is a really important case back in 1946, the Moore's Ford lynching. I believe it was the last mass-lynching in America and, you know, it was basically unsolved. And so Anthony Pitch, I know Laura Wexler had written a book called *Fire in a Canebrake* and it was about this case. I just think it's really important to be able to seek justice and get to the bottom of this, and accessing those grand jury transcripts would be just a major boon, not only to researchers but for justice in this country.

David Karp: Sure. And just a little bit of background on this lynching: it took place in rural Georgia in 1946. And it took place at a time in Georgia when the Democratic Party primary was closed to black voters, and there was a very contentious and racially charged governor's race in which for the first time, some black voters were exercising, or trying to exercise, their right to vote. Four people, two couples, were lynched near Moore's Ford, which is a river in this rural county, Walton County, Georgia, pretty much in broad daylight. There are various accounts to how many people

witnessed the lynching. There were certainly people who saw it and saw the perpetrators. Some accounts say that there were scores of people who saw this quadruple murder.

And the murder got some national attention. The president at the time, Harry Truman, ordered an FBI investigation and ultimately a federal grand jury was impaneled and heard from numerous witnesses in the town. And after several weeks of taking testimony, the grand jury adjourned and didn't charge anyone with these murders, and the murders have gone unsolved for the last 70 years.

Gilbert King: Right. And this was a really important case, I think, in terms of American history. We talked about Harry Truman. He started that civil rights to secure these rights which was written right around 1946. I think it was pretty appalling to a lot of people who read that report, like the amount of violence that was happening in the Jim Crow South and these kind of cases and how they basically were never solved. It was always, you know, at the hands of unknown persons. And, you know, the FBI couldn't get a lot of white people to speak out. They certainly couldn't get a lot of African Americans to speak out at the time because African Americans at this time in history were terrified that by speaking to white FBI agents, the white FBI agents would go straight to the police or the sheriff's department and tell them exactly who knew what. And the next thing you'd know, you'd have another lynching on your hand or at least someone being chased out of town and told never to come back. And so African Americans were just terrified about speaking to authorities about this and white people certainly weren't speaking out about it. And so in a lot of these lynchings in the 20th century in the United States, they just remained unsolved. You could never get a grand jury to even indict anybody. So it was a real problem in the country.

David Karp: And you haven't written about this particular lynching, but were there themes or sort of historically significant events in this lynching that you've seen in the work you've done on your three books?

Gilbert King: Well, this case was particularly violent because it involved, you know, more than one person being lynched. It was two couples. So this mass lynching aspect of it, you know, this late, you know, after WWII I think was just extraordinary. It really stood out in American history. And the fact that these kind of cases would just go unsolved I think is just a major blot on the credibility of the criminal justice system in the United States.

But, this was really indicative of what was happening in Jim Crow South constantly. So many of these cases were just never solved or if they were, sometimes they would actually get indictments and in the rare cases they would go to trial, you would never be able to get a jury of basically 12 white men to convict. And so those are the kind of cases that I run into a lot. Even the ones that make it to trial, which was really against all odds, the cases would become so important to protect white supremacy that they could never get any convictions on these. And that was just the rule of the day in the Jim Crow South. I mean, I've written about, you know, several of these kinds of lynchings and they all

seem to be very dissatisfying and almost as if the government knows who did it but they just can't get a conviction. And that's the big problem with these kind of post-war lynchings.

David Karp: As a writer and a historian, how do you go about researching these cases, especially when they happened so long ago and people have died and when there might be an urge to keep it quiet and to not relive something that's pretty ugly in the past? How do you deal with that?

Gilbert King: Right. Well, the major thing that I look for when I start writing about these cases, I want to know what kind of primary sources are available. If you go back too far, there really wasn't an investigation by the Department of Justice or the FBI. And so it was basically left to local law enforcement, and those files are pretty much gone in almost every case. So, they're really hard to research. As a writer, I have to really depend on filing Freedom of Information Act requests and then basically just going into the National Archives and getting my hands on the Department of Justice files. The only way I can really write about these is if there was a civil rights investigation because that way I know that there's been FBI reports that have been generated, that witnesses have been spoken to, and so I can really tell the story.

The FBI, in my experience, does a really incredible job in actually going out and investigating these things. They do about as best as you could possibly imagine, whether or not there's any interest in pursuing this civil rights case. I mean, J. Edgar Hoover basically looked at these kinds of cases - lynchings and civil rights cases - as a problem for his organization because many times they put together these airtight cases against, you know, lynchings and they could not get indictments, and so, it was ultimately seen as a black eye to the FBI. So, they didn't really like to go into this. It wasn't so much that they had certain feelings about race - which you can definitely make a case that they were not racially enlightened - but in the times that they did go forward and do these investigations, oftentimes these investigations would just die on the vine. So, it's really kind of frustrating, but in my experience, the FBI reports are pretty thorough and they're pretty telling. They don't have everything, like I mentioned, you know, there are certain people that just will not talk to the FBI, so in a lot of cases they're stymied. But, in the cases that I've written about, all the information is right there in the FBI reports, but the investigations just never went anywhere, so there was really no accountability.

David Karp: How hard is it to get these FBI files from the Freedom of Information Act? As you know, Gilbert, I was a journalist before I was a lawyer, and I can remember filing FOIA requests and getting back a response about two years later full of redacted papers. So, I'm just wondering as a writer with a book publishing deadline, how easy or how difficult is it to even get the information from FOIA requests?

Gilbert King: Well, that's a really great question and I'll give you a specific answer that will show you my involvement. When I was working on *Devil on the Grove* which was about, you know, it came out

in 2012, so in the years leading up to that it probably took me about five years. One of the first things I did was file the FOIA request because I wanted to get my hands, I knew there was a Groveland file. And so I put forward a request and I followed up with it.

And basically what they tell you at the National Archives is that these files are going to need to be gone through and vetted and if there's any names or any information in those reports - perhaps there's reference to grand jury testimony - that will all be redacted. And so, you go into a long queue and, you're right: it takes sometimes more than two years. I mean, I was told when I first filed this FOIA about this case and it was like a box of files I thought I would be getting, they told me that, you know, I was number, like, 165 in the long queue. And I would call back every month and they would tell me, "Now you're down to, like, 159." I'd call back the next month. "You're down to 147."

It occurred to me that it was going to be years before I'd get my hand on this. And then one afternoon after about a year of calling every month, the man at the National Archives said to me, "Mr. King, today is your lucky day."

And I said, "Oh, wow! Did I crack the top 100?"

And he said, "No. It's better than that." He said, "After 60 years, once the investigation starts, after 60 years all of it becomes public domain."

And so I said, "What does that mean for me?"

And he said, "That means if you came down here tomorrow, we would have to turn over all these files to you without redacting anything."

And so that's exactly what happened. I just happened to luck into this 60 year window that had passed and now I could get the unredacted files. And so that was what happened to me and that's how I benefited because I'm not sure I would have ever gotten my hands on those files, and once they were redacted, I never would have seen the information that I saw in those FBI files.

David Karp: And were you able to get any grand jury transcripts for that book or for your other books?

Gilbert King: No, I never was. I mean, in *Devil in the Grove* there was never a grand jury that was impaneled, but in a book I wrote subsequently, *Beneath a Ruthless Sun*, I knew there were grand jury testimony that I could, you know, I tried to access. I was basically told that, you know, the precedent, they're not going to just turn this over. But, I was told that because the Florida state legislature had done an investigation and the special master had requested that he be able to look at the grand jury testimony and the transcripts from the grand jury. And Federal Judge Brian Simpson up in the

northern district of Florida acceded to that request, and he permitted the special master in this case to get his hands on the grand jury testimony. And so I thought - maybe with that precedent I might be able to get access to them myself. And I tried a couple ways and I even got a law firm involved. And they basically told me, "You're going to have to file a suit and it's probably going to take years."

And so I kind of decided to back off it, but it was very, very frustrating to me because I felt like that grand jury testimony would really have some of the mysteries and some of the information that I really wanted. And I kind of knew it was in there and so it was really frustrating to know that that was, you know, within, you know, I knew what building it was in. If I could just get my hands on it and see it. And I also kind of knew there was no way I was going to get them.

David Karp: How much of a difference do you think it would have made? I mean, one of the issues that came up in the *Pitch* case that we worked on was this idea that there's enough information out there. Mr. Pitch had the FBI files. He didn't really need this additional trove of documents. Do you think there's anything to that argument?

Gilbert King: You don't know what you don't know until you see it. You know, it just reminds me that all it takes is one kind of document or one kind of reference or one kind of denial or admission. I would have loved to see it. I think that something's always in there.

I can tell you that one of the things, once I had gotten my hands on the Florida legislature reports on this particular case, I noticed that there were certain references and inter-office memos that just weren't caught by anybody. So, they would reference some of the grand jury testimony and sometimes I would see things where the grand jury testimony, they were referring to that in the reports and it would be redacted. But, the black markings across certain names I could sort of figure out because I knew it could only be, like, three or four people and, you know, one of the names was fairly short. And so when I saw that really short name I said, "That's got to be him." And so you can sort of put together the information based on what you know.

But, I would disagree. I would love to see, you know, those transcripts because, you know, that's an opportunity sometimes for a person who might have said something to a police officer or an investigator and now all of a sudden he is, you know, under oath before a grand jury. The answers might be different. I believe that's what happened in the case I was looking into. I fortunately was able to I think read around it and get to the bottom of it. But, you know, there's certain things. I don't know everything. I know certain things happened in that grand jury room and I would love to know what that was.

David Karp: Sure. You know, it's interesting. In this decision, one of the judges, the 11th Circuit panel Judge Graham who was a visiting judge from Ohio, filed a dissent and part of his dissent talked about the shame and the embarrassment that family members and descendants of witnesses or

even Ku Klux Klan members would feel if all of this is dredged up. And I'm wondering what your experience with that is to the extent in your research you've gone to family members of people and you've tried to interview them about what their father or what their relative did. What kind of reaction do you get?

Gilbert King: Well, it is painful. I mean, there are certain experiences I've had when interviewing family members and, you know, sometimes I'm breaking the news to them that, you know, their relative was involved and their relative might have been in the Ku Klux Klan and they were named. You know, it is shameful. But, I also recognize that most of the people I've talked to, you know, they knew. They knew that there was, you know, some activity involved. And, you know, it's not pleasant. But, I think I was reading an interview with Anthony Pitch where he was talking about this very topic. And, you know, he said, "What if somewhere along the line they find out who Jack the Ripper was in England? And do you not come forward with that information because a relative of Jack the Ripper might be shamed by this? I mean, it doesn't really make any sense." And so my argument falls into that, too. I mean, yeah, it would definitely be painful for the people involved who find out maybe, you know, their father or their uncle was involved in the lynching or a ringleader of the lynching. But, you know, is that any different than what we have in any criminal case at all? And why do people have to be protected from that? That to me is not the purpose of why grand jury testimony is secretive.

David Karp: Well, Gilbert, one of the interesting things about this case was the way that the court was struggling not just with the legal and the textual questions but also with historical and public policy questions. And Judge Jordan who's on the 11th Circuit asked during the initial oral argument, "How do we know what's history? What's historical to one person and one family may not be historical to another. How do we decide what records are of exceptional historical importance?" And I'm wondering as a historian how you answer that.

Gilbert King: Yeah, well, I mean, that is an interesting question. I guess my way of thinking on it is sort of the way that the manner in which grand jury testimony is denied to journalists. And in the cases that some grand jury testimony has been released, it's usually in the case where there was some kind of government corruption or cover-up or something that outweighs the right of the public to know about these secretive grand jury proceedings. And so my think is, it's not so much about the families who were really, you know, affected by these particular lynching cases. It's really about the American criminal justice system. And if this testimony can point to ways in which, you know, things were covered up or government officials were being corrupt and not doing their jobs, which is exactly I think what you have, the case when you have law enforcement that's so intertwined with the Ku Klux Klan and a lot of these witnesses, that needs to be exposed. And I feel like the credibility of the entire criminal justice system is really hinging on these kind of events. And so if you have law enforcement perjuring themselves and they're identified as being present and maybe the ringleaders of these lynchings, which is often the case in the Jim Crow South, to me that sort of outweighs the need for public secrecy. That needs to be exposed so that there can be some kind of accountability and

credibility other than just sweeping it under the rug and moving on to the next case and saying this testimony can never be seen by anybody.

So I don't really believe in the argument that, you know, family and shame and what's historic to one family or the other is really should be a guiding principle. I really think it should be the credibility of the US government. That to me is the thing that really I think should take precedent.

David Karp: Have you found that uncovering these histories makes a difference sort of in the present day? I mean, with your books does it matter to what we're doing now or what we may be doing in the future?

Gilbert King: I really do think it matters. I'll give you an example. So, in *Devil in the Grove* which came out in 2012, you know, slowly after, especially after the Pulitzer prize there seemed to be a lot more attention on this case. And I think a lot of people reading this and just saying, "How can this happen? How could this have happened in the not-so-distant past?" I mean, there were people who were still alive who were involved in this case. So it's not like some ancient history.

And so what happened was that a lot of people began to read the book within the legislature and a couple of legislatures decided to put forward a claims bill that sought an apology, a pardon, and ultimately exoneration for the Groveland boys in this particular case. And momentum began to build. And I think it was because, you know, Florida began to think that, you know, in order to move forward, you have to sort of acknowledge some of these really grave and gross injustices of our past.

And when you look at the role of law enforcement and the state attorney's office and the judge and all the way up to the governor and the US attorney, they were all really complicit in keeping this civil rights case under wraps and not letting it be exposed. And so the official version that has lingered for, like, six decades was the version of Sheriff Willis McCall and law enforcement's version of this case that a woman had been sexually assaulted by four African Americans and on the evening on their re-trial, the sheriff decided to shoot them because they were attempting an escape, which turned out to not be the case. And that was in all the FBI reports that were sealed and never seen for decades. And so ultimately when I got my hands on these documents there were basically confessions and all of this information exposing the perjury, the manufacturing of evidence, the prosecutorial misconduct that was not revealed at the time of the trial. And so I think the state recognized that, you know, how can we move forward and have credibility of there's no accountability, if we can't look back at certain cases and say we got this wrong? So it does serve a purpose, I think, for the future going forward if we can sort of correct and acknowledge some of these sins of the past.

David Karp: And I think that's one of the reasons that you and I got involved in this case. We filed an Amicus brief in the 11th Circuit on this case arguing that district courts do have the inherent authority

to release these grand jury records of historical importance and that the release of the records in this case was proper. I know that we felt that this was an important case for historians and for journalists and, of course, we're waiting to see how the 11th Circuit rules. But I'm wondering what the impact might be if the courts close the door to this type of access. As you know, the DC Circuit has ruled in a different case on the same issue and found that the courts don't have the authority to release these records except in very limited circumstances, and even, as in this case where the government agrees at least in theory, the records are important, they're historically significant, and they should be released but the courts just don't have the power to do it. So if this case results in the records remaining sealed, what kind of impact do you think that's going to have on journalists, historians, and people who want to examine our past?

Gilbert King: Well, I think it'd just be a really lost opportunity to really correct some of these injustices. You know, we talk about in America we have this haunted past of the sin of original slavery, but you know, after slavery ended, talking about, like, Reconstruction onward, there was a great deal of racial violence. It started the whole mass incarceration system and the system of Jim Crow, led to the system where, you know, African Americans who were enslaved before were actually an investment that, you know, slave owners had to make. In other words, lives really mattered. But, once slavery ended African American lives became sort of disposable. And so that was where you saw this massive increase in violence against African Americans at the time. And so that continued. It was like a carnival of violence. And most of these cases were never solved.

And it didn't have to be lynchings; they could just be straight up disappearances or resisting arrest cases where, you know, law enforcement killed somebody. So, sometimes I think the lynchings, I think we have documented about 47,000 lynchings in America. That doesn't even begin to show the total number of racial violence and murders that were happening at the time.

And I think, you know, we're trying, it should be about truth and reconciliation. And in order to get to the point of reconciliation, you have to get to the truth. And by not knowing how these cases involved the government, involved law enforcement people, who were the lynchings involved in these cases, we'll never get to the truth. It'll just be buried sometimes in this grand jury testimony. And I think that would just be a great shame. I mean, some of these cases are generations old and if the worst you have to deal with is a community member who can point back to, you know a great-uncle or a grandfather who might have been involved in this, I don't think that's a severe cost to pay in order to get to the truth of what really happened and who maybe was involved in making sure that justice never saw the light of day in these kind of lynchings. So, I just think it's a great lost opportunity.

I'm not sure that if the court decides that, you know, no media person or anyone should ever have the right to see grand jury testimony, I think it'll really silence a lot of attempts to get further, you know, attempts at getting grand jury testimony. It might be seen as having been decided already. I just think

that could be a really stifling moment for historians that they know they're never going to get to the bottom of some of these cases.

David Karp: Well, Gilbert, one thing that was interesting to me listening to the oral argument in this case was the 11th Circuit was very interested in the effect that a new law would have on this case. And the new law is the Civil Rights Cold Case Collection Act. And Senator Doug Jones of Alabama was the chief sponsor behind this act, which President Trump signed. And it's a complicated act, but in short for grand jury records it created an advisory board that would be appointed by the president that would have to include at least one professional historian. And this advisory board would review requests for access to government records including grand jury transcripts of civil rights cold cases. And if the panel recommended the release of the records, that would go to the attorney general and it could also go to various government agencies to consider. And if the attorney general agreed that the record should be released then they could ask a court to release the records. The 11th Circuit was very interested in that procedure. And I'm wondering if you have any thoughts about whether sort of a centralized process that involves historians is better or worse for historians like yourself who are trying to get access to these records.

Gilbert King: Well, that's a great question. And I think, you know, any kind of process that, I think you still need to be careful about this stuff. You know, maybe redacted grand jury testimony is the way to go. Maybe historians working with other, you know, legal experts can say this is material within these grand jury testimonies that's really getting at the heart at why you want a secretive grand jury. And so maybe it could just be judged on a, you know, per case basis where this material isn't necessary towards getting to the bottom of what happened in this case, but it could have the effect of maybe a chilling effect where witnesses might not come forward later knowing that the day might come when this material gets out. And so I really wouldn't have a problem with some kind of board or advisors going in and looking at this and sort of making a decision like what - what is necessary towards getting to the truth of these cases and what might be just excess material that could only be harmful in nature and wouldn't serve any purpose for historians or anyone writing about this case. And so maybe - maybe that's the kind of stuff that could be redacted. But, anything I think, any kind of compromise to getting a system in place that gives historians the right to look at grand jury testimony in some of these cold cases I think is just a positive step in the process and I would welcome something like that. I'm hesitant to just say we should just get a dump of all grand jury testimony. There has to be some process involved. And if it's a historian working along the lines with, you know, an attorney general's office it's better than what we have now, and so I would welcome it.

David Karp: Well, we will see how that plays into the 11th Circuit's decision. I mean, a couple of the judges noted that that law only applies to civil rights cold cases. So, many cases where grand jury records have been released like the Nixon grand jury, Alger Hiss grand jury, would not benefit from this law. So, we will see how the law impacts our case and what comes of it.

It's been great talking with you, Gilbert.

As we speak now, it's in November of 2019. The full 11th Circuit, all 12 judges, just heard oral arguments in the case. We probably won't get a decision for many months. And even when we get a decision I think there's a reasonable chance that the case could make its way to the Supreme Court. A very similar case in the DC Circuit, the historian there has filed a petition to have the case heard in the Supreme Court. And we'll see what happens with that and we'll see what happens with our case.

But, it's been a pleasure talking to you. It was great working with you on this Amicus brief that we think is very important for journalists and for historians and for writers and we're looking forward to seeing what happens with the 11th Circuit decision in it.

Gilbert King: Well, thanks, David. I really appreciate the help. And, you know, I think you're right. I think you're on to something with this. It's a really important case. I think it's going to have ramifications for people like me for many, many years to come. So, I'm hopeful and optimistic that something really positive might come from it. So, thank you very much.

Presented By



David A. Karp

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