

THE CASE OF THE BLACK-GLOVED RAPIST:

*Defining the Public Defender's Role
in the California Courts, 1913–1948*

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For seven months, an assailant that the San Francisco newspapers had nicknamed the “Black-Gloved Rapist” terrorized the city, breaking into his victims’ homes at midnight wearing black gloves and carrying a pencil flashlight. Finally, the police nabbed their man. Frank Avilez was arrested on Saturday morning, July 12, 1947, “and for many hours questioned by police inspectors and assistant district attorneys” until he confessed to everything: fourteen rapes and attempted rapes.¹ Avilez was 24 years old — with a 17-year-old wife — but had, according to his psychiatric records, the “mental age” of a 10-year-old, an IQ in the 70s, and a possible

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¹ *People v. Avilez*, 86 Cal.App.2d 289, 292 (Cal.App. 1st Dist. 1948); *Rapist Confesses*, S. F. CHRONICLE, July 13, 1947, at 1.

diagnosis of “sexual psychopathy.”² “My married life was all right,” he told the *San Francisco Chronicle*, when asked about his motive. “I just didn’t like staying home nights.”³

After his bail hearing on Monday morning, July 14, Avilez’s family sought the help of Melvin Belli, a young trial lawyer who would soon win national fame and fortune as the flamboyant “King of Torts.”⁴ Belli agreed to take the case, and contacted the district attorney’s office to announce that he had been retained to represent Avilez. He also mentioned that the defendant’s family was planning to attend the next day’s arraignment, and asked that the case be held over until the family arrived.

The next morning in court, there was some confusion in the courtroom as to who was representing Avilez. The D.A. told the judge about his conversation with Belli, but no one told the defendant or the public defender about it. According to a police inspector, Avilez was unhappy because Belli had visited him in jail the night before and proposed an insanity plea; he said that “he was sane and guilty and wanted to get this over as soon as possible.”⁵ Meanwhile, not knowing the family had retained Belli, Avilez’s wife had visited the public defender’s office at some point to discuss the case.⁶

In light of all this, and since he was never told that Belli and Avilez’s family were on the way, Gerald Kenny, the public defender, assumed Avilez to be his client. Kenny looked over the complaint, then went over to the cage and spent “a matter of seconds” conversing with Avilez through

² Appellant’s Opening Brief at 12-13, *People v. Avilez*, 1 Crim. 2506 (Cal.App. 1st Dist. 1948). Avilez’s older brother had been committed to the Sonoma State Home for the Feeble-Minded since 1936. *Id.* All court documents related to *Avilez* cited in this essay are available at the California State Archives by requesting the file for California case number 1 Crim. 2506.

³ *Confessed Rapist in Jail*, S. F. CHRONICLE, July 14, 1947, at 3.

⁴ Belli was dubbed the “King of Torts” by *Time* magazine in 1954. In addition to being credited with pioneering modern products liability law, he grabbed headlines with his glamorous clientele, which included Mae West, Errol Flynn, the Rolling Stones, Jack Ruby, and Zsa Zsa Gabor. See Jim Herron Zamora, “King of Torts’ Belli dead at 88,” S.F. EXAMINER, July 10, 1996. A somewhat fawning biography of Belli is Mark Shaw, *MELVIN BELL: KING OF THE COURTROOM* (1976).

⁵ *Avilez*, 86 Cal.App.2d at 292.

⁶ Appellant’s Opening Brief, *supra* note 2, at 19.