

Arresting suspect a calculated risk

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Authorities took a calculated risk in arresting Andre Rand for the kidnapping of Jennifer Schweiger, the 12-year-old Down's syndrome girl who disappeared July 9 near her home in Westerleigh.

Criminal defense lawyers speculated that authorities hoped to generate activity in a case that appeared to be going nowhere. Authorities probably hoped that Rand might be shocked into making a statement upon arrest, or that a heretofore reluctant witness, knowing that Rand is now in custody, would step forward.

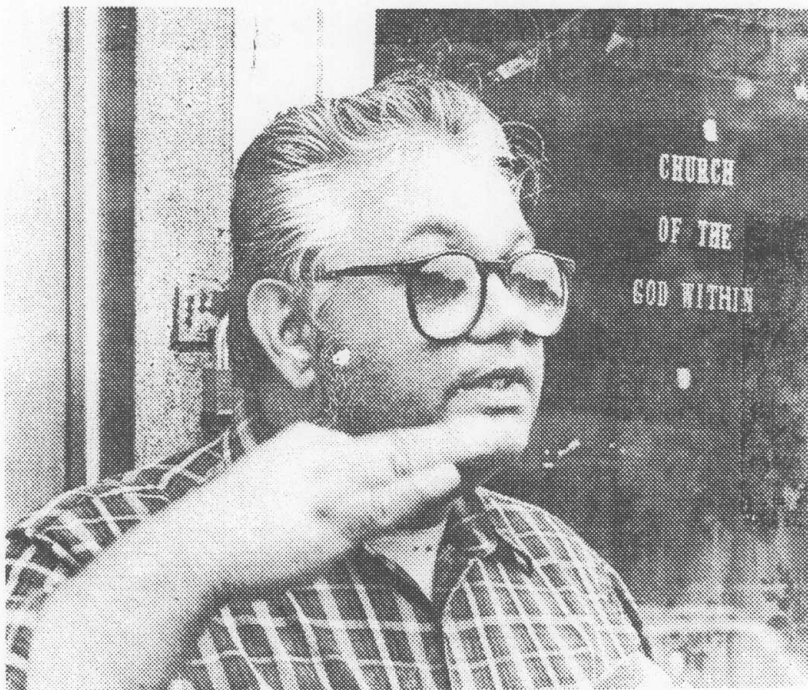
One fact is perfectly clear: By

arresting Rand, authorities have cut themselves off from any further questioning of the man unless it is with the consent of the 43-year-old transient's lawyer, and this, under ordinary circumstances, appears unlikely.

As one defense lawyer said, the decision to arrest Rand was a gamble by authorities to break an impasse in the missing person case, and that no one can quarrel with the decision if authorities have a "prima facie" — minimum proof of possible guilt — case against Rand.

The district attorney's office also bought additional time before the case goes to a grand jury

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ADVANCE PHOTO/FRANK J. JOHNS

The Rev. Charles G. Muskett tells an Advance reporter how, at the request of police, he allowed Andre Rand into his home.



ADVANCE PHOTO / FRANK J. JOHNS

The Rev. Charles G. Muskett prepares to raise his church's protective shield. The two upper windows in front of the room.

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Arrest

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since, at his arraignment Wednesday, the suspect was ordered to undergo psychiatric examinations for 30 days. Again, the hope was that more evidence will turn up before a grand jury considers it.

District Attorney William L. Murphy continued yesterday to keep a lid on facts in the case. He also declined to discuss published reports attributed to police, identifying Rand as a suspect in other missing person cases. He confined his remarks to the Schweiger case.

Murphy conceded that the case against Rand is a "circumstantial test."

Witnesses last saw the girl walking with Rand on the grounds of the Staten Island Developmental Center, Willowbrook, on the day she vanished, police said.

"One of the tests of circumstantial evidence is to eliminate every hypothesis other than guilt in a case," the district attorney said. "So we have to look at all the circumstances. In a missing person case, one of the circumstances we look into is who was last seen with the missing person. And if seen with the missing person, what was he or she doing with that person?"

The district attorney said the case against Rand will be presented to a grand jury, but he was uncertain when that might take place. It might even occur before Sept. 4, when Rand is scheduled to appear in Criminal Court, Stapleton, after undergoing psychiatric testing to determine his fitness to face criminal proceedings.

If psychiatrists find Rand to be unfit, he could be committed to a mental institution until such time that he is found to be able to assist in his defense and stand trial. Such action may take place at any step in the criminal process, whether in Criminal Court or in the Supreme Court, should an indictment be returned against him.

Murphy said any responses by Rand to psychiatrists' questions cannot be used by prosecutors at a trial.

However, it is possible that psychiatrists called upon to testify at a fitness hearing for Rand might relate some of his responses to support conclusions they reach.

Psychiatric testimony, including some of Rand's answers, would probably figure at a trial where the defendant might raise an insanity defense.

Murphy said police and members of his office could have sought to question Rand as long as he remained free, even though he was regarded a suspect. As long as he was not in a "custodial setting," he need not have been informed of his so-called Miranda



ADVANCE PHOTO/STEVE ZAFFARANO

Andre Rand leaves Criminal Court after his arraignment Wednesday.

rights, including his right to remain silent and to have counsel present.

All this has now changed with Rand's arrest.

"Under New York State law, since he has been arrested and charged, he is entitled to have an attorney present with him at all stages of the criminal proceedings against him," Murphy said. "For him to waive his right to an attorney would be to waive his right to have an attorney present in court at all times. The likelihood of this happening is remote."

In other words, Murphy sug-

gested that a defense lawyer would never permit his client to talk to authorities once charged, unless there was something to be gained, such as agreement to a plea on a lesser charge.

Any new developments in the case now will undoubtedly come from "old-fashioned police work and citizen cooperation," Murphy said.

In making the decision, Murphy said "one of the things that crossed our minds is that maybe someone will come forward with information." However, he hastily added, "this is purely speculation on our part."

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