

Reporter must testify about Rand interview

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A Daily News reporter who posed as a "friend" to interview Andre Rand in a visiting room in the psychiatric ward at Kings County Medical Center will be required to appear before a Staten Island grand jury, bringing with her any notes and memoranda she may have pertaining to the interview, a judge has ruled.

The reporter, Heidi Evans, is scheduled to appear today before the grand jury. The jury is inquiring into the disappearance and death of 12-year-old Jennifer Schweiger of Westerleigh on July 9. Her body was found Aug. 12 in a shallow grave about 150 yards from a campsite on the grounds of the Staten Island Developmental Center, Willowbrook, that police said had been used by Rand, a 43-year-old drifter.

The interview took place Aug. 16, a short time after Rand had been arrested on charges of kidnapping and unlawful imprisonment. At least seven witnesses are known to have last seen the girl alive, apparently happy as she walked hand-in-hand with Rand near her home, and later at the developmental center, more than a mile away.

Rand denied in the interview, published the next day, having had anything to do with the girl.

Rand had been sent to the hospital to undergo psychiatric tests to determine whether he is fit to stand trial. Psychiatrists subsequently found him competent.

The grand jury is expected to conclude its inquiry tomorrow. It heard testimony yesterday from several witnesses and is scheduled to hear more testimony today and tomorrow, including from Ms. Evans.

Supreme Court Justice Norman J. Felig's action compels the reporter to testify. He took the action in denying a motion by The News to quash a subpoena. The reporter could be held in contempt if she balks at appearing before the grand jury.

The newspaper maintained that the reporter's notes and the information sought by the grand jury was protected from disclosure by the "qualified privilege" accorded to news reporters under the "free speech, free press" guarantees in the state Constitution.

The paper also contended that any judicial decision to compel a reporter to disclose information in the course of his or her job would have a "chilling effect" on the reporter's ability to function and on the "free flow of information to the general public," the judge noted.

Felig said he considered the scope of the "qualified privilege" in the context of a pending grand jury proceeding. He said the case before him had failed to meet at least one of three tests that the courts have evolved to strike a balance between freedom of the

press and the need to obtain "relevant" information in a criminal proceeding.

The judge listed these three tests as a showing that the information sought was "highly relevant" to the inquiry, that it was necessary to the "position" of the party requesting it and that the information may not be obtained from an alternate source.

Felig observed that recent appellate decisions, including some by the Court of Appeals, the state's highest court, had emphasized the need for authorities to exhaust alternate sources before seeking to obtain the same information from news reporters.

With respect to reaching out for alternate sources in the Rand interview, Felig said the district attorney's office had submitted a sworn statement from a correction officer who was present during the reporter's interview with Rand in a semi-public visiting room.

The officer said Ms. Evans never identified herself as a reporter, that Rand was speaking "in a low voice" and was inaudible. At the same time, the officer said she was supervising three more visitors with inmates. The officer said the other visitors and inmates were engaged in conversations of their own and were even farther from Rand and Ms. Evans than herself.

Accordingly, Felig said he believed that information sought by the district attorney from Ms. Evans could not be obtained from an alternate source.