

# Court ruling due on testimony by news reporter

BY ADVANCE STAFF WRITER

The state Supreme Court's Appellate Division is expected to decide today whether a newspaper reporter will have to appear, with her notes, before the grand jury considering kidnap charges against Andre Rand.

Heidi Evans, a reporter for the Daily News, was ordered before the jury by a Staten Island judge after she interviewed Rand on Aug. 16, while he was undergoing court-ordered psychiatric testing at Kings County Medical Center. The newspaper is seeking to vacate Supreme Court Justice Norman J. Felig's order and quash the subpoena by the district attorney's office.

The interview was published the following day, and the district attorney's office then subpoenaed her to testify before a grand jury that has been inquiring into charges that Rand, a 43-year-old drifter, kidnapped 12-year-old Jennifer Schweiger, a Down's syndrome victim, on July 9 near her home in Westerleigh.

The girl's body was found buried Aug. 12 on the grounds of the Staten Island Developmental Center, Willowbrook, a short distance from where police said Rand had a campsite.

The Daily News quickly appealed Judge Felig's decision after being informed yesterday that he had denied its motion to quash the subpoena.

The newspaper contended that the reporter was protected from being compelled to disclose information under "qualified privilege" rights accorded newsmen under the state Constitution, and that a court order

would have a "chilling effect" on not only Ms. Evans but other reporters in their attempts to perform their jobs.

Yesterday, the grand jury reportedly heard more witnesses for the second time this week, and will hear more testimony today before voting on kidnapping and unlawful imprisonment with which Rand was charged when arrested shortly before the girl's body was discovered.

Sources close to the investigation say that a grand jury vote is likely today, with or without Ms. Evans' testimony. One reason for the urgency is the prospect that Rand could conceivably be released tomorrow unless he has been indicted.

Rand was found competent to be tried a week ago, and tomorrow is the deadline for the district attorney's office to come forth with either an indictment, or to provide at least minimal evidence at a hearing before a judge in the Criminal Court, Stapleton, to justify the judge ordering Rand to be continued to be held pending completion of grand jury action.

A judge has wide discretion in holding a defendant for grand jury action. The problem from the view of the district attorney's office is that a defendant such as Rand has been preliminarily detained longer than normal without a hearing to determine his fitness. Now that it has been determined he is fit to be tried, he cannot, under the usual circumstances, be detained any longer without an indictment or the hearing.