

Rand lawyer confident of acquittal

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Ever since John Adams defended British soldiers involved in the Boston Massacre more than 200 years ago, the American legal profession has traditionally prided itself on its obligation to take on unpopular causes.

Jerome V. Giovinnazzo, a veteran criminal defense lawyer, probably would be the last person to paint himself as a knight on a white charger. He feels his court-appointed responsibility from Rand is a responsibility from which he should not shrink as a lawyer.

Indeed, he sees Rand's defense as a stimulating challenge. And he has sufficient confidence in his professional abilities to believe, that given a new forum away from what he regards as a hostile Staten Island, he probably can win an acquittal for the 43-year-old drifter.

In what is undoubtedly one of the most publicized criminal cases in Staten Island's history, Rand is charged with the kidnapping-murder last summer of Jennifer Schweiger, a 12-year-old with Down's syndrome whose disappearance jolted a community to action.

In the view of District Attorney William L. Murphy, it was community involvement that led to the building of a case of circumstantial evidence against Rand.

It is what judges may perceive to be the community's attitude toward Rand and, in the larger view, whether Staten Island residents can ultimately provide Rand with a fair and impartial hearing on the murder charge, that will shortly occupy the attention of the courts in the case's preliminary stages.

Giovinnazzo conceded that when he agreed to represent Rand he

was aware that the case was "explosive" and community feeling went beyond normal interest to displays of fierce emotion, even to threats on his own life.

Giovinnazzo says he is experienced enough to take the threats in stride as part of his job, just as he is does the outpouring of publicity.

Murphy and Giovinnazzo have publicly expressed professional respect for the other, and one magazine article has even discussed the professional approach of the two in the face of the extensive publicity.

Murphy said he first became

aware of Giovinnazzo's ability as a defense lawyer in the late 1970s when Giovinnazzo represented a defendant named Eric Loize in a murder case. As the case proceeded toward jury selection, Murphy said he was impressed by Giovinnazzo's trial preparation work.

Giovinnazzo had just run off a remarkable string of four murder trials in which he had either won acquittals or dismissals of the indictment.

Murphy observed that there is a facet to criminal defense

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Jerome V. Giovinnazzo

Lawyer

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lawyer that is generally overlooked by the public but which those in the profession recognize as being every bit as important as winning or losing a case at trial.

This is a lawyer's ability to analyze a case. In the Lotze case, Murphy said Giovinnazzo weighed the strength and weakness of the prosecution's case, and his counsel Lotze to plead guilty rather than go to trial, with the result that he saved his client "a number of years in prison."

What left him with such a vivid impression, Murphy said, was that Giovinnazzo had just "run off this string of successes" and yet he still had the presence of mind to appreciate that as a trial lawyer, "try as you might, you're still going to lose some."

Murphy said Giovinnazzo's decision in the Lotze case "lent credence to the fact that he is a talented trial lawyer."

From Giovinnazzo's vantage point, he says he has only respect for what he calls Murphy's "very professional stand in not contributing to the damaging publicity" accorded Rand, despite the fact that Murphy might have been tempted to capitalize on the publicity at a time when he is running for reelection.

Giovinnazzo blamed police sources for what he feels was prejudicial publicity that made his client look "evil" by identifying him as a suspect in the disappearance of other persons on Staten Island — a characterization from which authorities now draw away.

Giovinnazzo said he believed that Rand's arrest Aug. 4 on a kidnapping charge — eight days before the girl's body was found — had been "premature" and that police acted out of "frustration" as their investigation ran into a dead end.

The lawyer said he believed Murphy was "too conservative" to have sanctioned an arrest on such "meager" evidence, and that police had not consulted him.

Giovinnazzo, in his 33 years as an attorney, has always kept his hand in criminal law, although in recent years he acknowledged that the stress of criminal trials has led him more and more into civil matters.

"My first love always has been closely contested criminal cases," said the former police officer.

From the outset of his appointment on Aug. 14, Giovinnazzo has insisted that Rand cannot receive a fair trial on the Island because of pre-trial publicity.

In moving for a change of venue, seeking to shift trial of the case to another county, Giovinnazzo has attached to his papers the results of a private poll he commissioned. Of 230 persons questioned, the poll showed 95 percent were aware of the case as a result of the publicity and 196 of those questioned believed Rand to

be guilty. The motion is returnable Friday before the Appellate Division in Brooklyn.

Despite Staten Island's growth in population in recent years, Giovinnazzo said Staten Island remains a "closely knit community. People feel threatened... People don't think of him as the defendant in just this case. They see him as a threat to their children, their nieces... They let their emotions rather than their intelligence guide (them)."

The district attorney doesn't agree with Giovinnazzo's contention that Rand can't receive a fair trial on the Island. There are court procedures available for ensuring the selection of a fair and unbiased jury without having to try the case elsewhere, he said.

While he conceded that the case has received considerable attention from the press, Murphy said he did not believe it "excessive" in view of the developments that were then taking place and which led news editors to conclude that it was "newsworthy" material.

He described the community involvement that took place following the girl's disappearance on July 9 from near her home in Westerleigh and which continued with volunteers from throughout the city taking part in the search up until her body was discovered Aug. 12 in a shallow grave in the former Staten Island Developmental Center, Willowbrook, a

short distance from where Rand had maintained a campsite.

Murphy noted that the press played a key role in the search and its cooperation was sought in the investigation and search for the girl's abductor.

Without the extraordinary involvement of the community, in the investigation as well as the search, "there would be no case here," Murphy said.

Legal lines are already being drawn for a possible trial — a trial which both Giovinnazzo and Murphy concede will focus on circumstantial evidence.

Giovinnazzo said that the crux of the prosecution's case seems to be that Rand was seen with the girl on the day she disappeared. The prosecution is believed to have eight or nine witnesses who say they saw the girl smiling and walking hand-in-hand with Rand from near her home to the developmental center, more than a mile away.

She could have been picked up by almost anyone at any time, Giovinnazzo says. There is no evidence that she was threatened. Giovinnazzo says he has evidence that can disprove that Rand was the person walking with Jennifer on the day she was last seen.

Furthermore, he says the autopsy report fails to provide any clue as to when or how the girl died, simply ruling that her death was a homicide. "Without these

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essential elements, it's going to be difficult to prove Rand or anyone else killed her," Giovinnazzo said. From a legal point of view,

Murphy said he believes the case will not be "extraordinary, but interesting" as it will highlight the importance of circumstantial evidence.

While many persons have a reluctance to accept circumstantial evidence as proof of a person's guilt, Murphy said the "legal standards (for such evidence) are so exacting that it can make it a very strong case, depending on how it is developed in a trial setting... I can't comment on the merits of the case under the code of professional responsibility. All I can say is watch."

If the case goes to trial early next year, some observers feel interest in it may be sufficient to make it among the first murder trials in the state to be the subject of TV coverage, as well as press photographers, under an experimental program for permitting cameras into courtrooms that is being implemented on Staten Island and other counties beginning Dec. 1.