

# Rand



ADVANCE PHOTO/STEVE ZAFFARANO

Andre Rand shows no emotion as his trial nears an end.

## Jury set to weigh Andre Rand's fate

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The Andre Rand kidnap-murder trial was to be handed to a Supreme Court jury this morning. Justice Norman J. Felig directed the jury of eight men and four women to report at 9:30 a.m. so that he could instruct it on the law in the case before permitting the jury to commence delibera-

tions in the death of a 12-year-old Down's syndrome girl, Jennifer Schweiger.

The judge said he will charge the jury not only on the two counts in an indictment — second-degree murder and first-degree kidnaping — but also on a lesser kidnaping charge and a felony count

of unlawful imprisonment.

Upon conviction, the top counts of kidnapping and murder each carry a maximum sentence of 25 years to life.

The trial entered its fifth week yesterday. Over a nine-day pe-

riod, the jury heard 43 witnesses called by the prosecution and three defense witnesses.

In a 75-minute closing statement, defense attorney Jerome V. Giovinazzo conceded that Rand, a 44-year-old drifter, is an "oddball" homeless person who sometimes

sleeps in the woods, in cemeteries and parks, and "if he's lucky," in an apartment. But the lawyer denied that his client is a kidnapper or a murderer.

On the other hand, Assistant District Attorney John Loughrey, at the conclusion of his 55-minute summation, pleaded with a jury not to permit sympathy to enter into its deliberation.

If there is sympathy, he said, "don't let it be in favor of the defendant, who made all the decisions on July 9, 1987, ladies and gentlemen, but let it be in favor of this little girl who had her choices taken from her."

The girl's disappearance shortly before 2 p.m. on July 9 from in front of her home in Westerleigh, set off the largest search for a missing person in Staten Island's history, with hundreds of volunteers joining police, national guardsmen and other governmental forces in a massive search that covered many areas of the Island.

The search ended with the discovery of the girl's nude, partially decomposed body Aug. 12 in a shallow grave on the grounds of the former Staten Island Developmental Center, Willowbrook, about 500 feet south of a campsite maintained by Rand, a former center employee.

As the two lawyers gave the jury their different views, the gaunt, sharp-featured Rand sat stoically at the defense table, as he has throughout the trial. Sitting directly behind him, in the first row of the spectator section, were the dead girl's parents, Karen and Kenneth Schweiger, now New Jersey residents.

The prosecution's case is built almost exclusively on circumstantial evidence; there is no forensic or other evidence to connect Rand to the crimes.

The final witnesses yesterday turned the conclusion of the trial into a battle of words between forensic pathologists — one called for each side — to rebut or support the views of an associate medical examiner who in her autopsy report listed the cause of death as "undetermined," but

changed her opinion at the trial 18 months later. She now believes the girl died of asphyxia, although of unknown type.

Dr. Dominick J. DiMaio, a former city chief medical examiner, called by Giovinazzo, disagreed with the associate medical examiner. He testified there was "no way" that a cause of death could have been determined from the autopsy.

Dr. Louis Roh, deputy chief medical examiner of Westchester County and a former associate of Dr. DiMaio's in the New York City

Dr. Roh said he agreed that death was due to asphyxia. Although he could not pinpoint the type of asphyxia, Dr. Roh ruled out natural factors and said he was convinced that a certain "mechanism" had been applied to stop the girl from breathing.

Dr. DiMaio and Dr. Roh both said the girl had not been buried alive. They said she had been buried with her face up soon after death, certainly within 24 hours.

The judge denied motions by Giovinazzo to dismiss the charges in the indictments on the grounds that the prosecution had failed to prove Rand guilty "beyond a reasonable doubt."

Giovinazzo, in his summation, tried to bring before the jury different character "facets" of Rand that he said depicted the defendant as "eccentric on one hand, and a pretty nice guy on the other."

The lawyer posed the question: "Is he an ogre?"

Giovinazzo reminded the jury of testimony that had Rand entertaining children with music, fixing bicycles and showing them his campsite and his worldly possessions.

While Rand did not take the witness stand in his own behalf, his lawyer said he was only performing a "kind gesture" on the afternoon of July 9 when he encountered the girl. Rand believed she had wandered from the developmental center and decided to take her back. "He was going there anyway," Giovinazzo said. Before reaching the center's administration building, the lawyer said the two became separated and did not see each other again.

Giovinazzo admitted that Rand lied when he told police that he had never seen the girl and had gone to Bayonne on the afternoon of July 9. Similarly, Giovinazzo said Rand lied when he told a newspaper reporter about 12 days after his arrest on Aug. 4 that he had never seen the girl.

The defense attorney sought to cast doubt on the ability of a specially trained bloodhound to follow the girl's scent from her home to a point within the grounds of the developmental center where an employee said he saw Rand walking with the girl in the direction of the campsite about 3 p.m.

Giovinazzo also attacked the circumstances surrounding the discovery of the girl's body. He

has contended that she may have been reburied. The lawyer claimed that an off-duty police sergeant who was active as a volunteer searcher sought to "cover up" for a retired firefighter who said he found the body.

The retired firefighter came upon the burial site four days earlier and while suspicious he did not go back until Aug. 12. He returned to the site alone and upon digging he came upon flesh and an odor.

He then returned to a center from which volunteer searchers operated to report his find. The sergeant called for a truck from his unit, Emergency High Services, to be present, but did not notify any other superiors. The sergeant then joined a group of volunteers who went to the site with the former firefighter and ascertained that it was a body, some three hours after the man had appeared at the center.

The prosecution's case is based on the testimony of 10 witnesses, nine of whom identified Rand as the man they saw walking with Jennifer between 2 and 3 p.m. on July 9, starting a block from the girl's home and continuing along a 28-block route that ended on the grounds of the center.

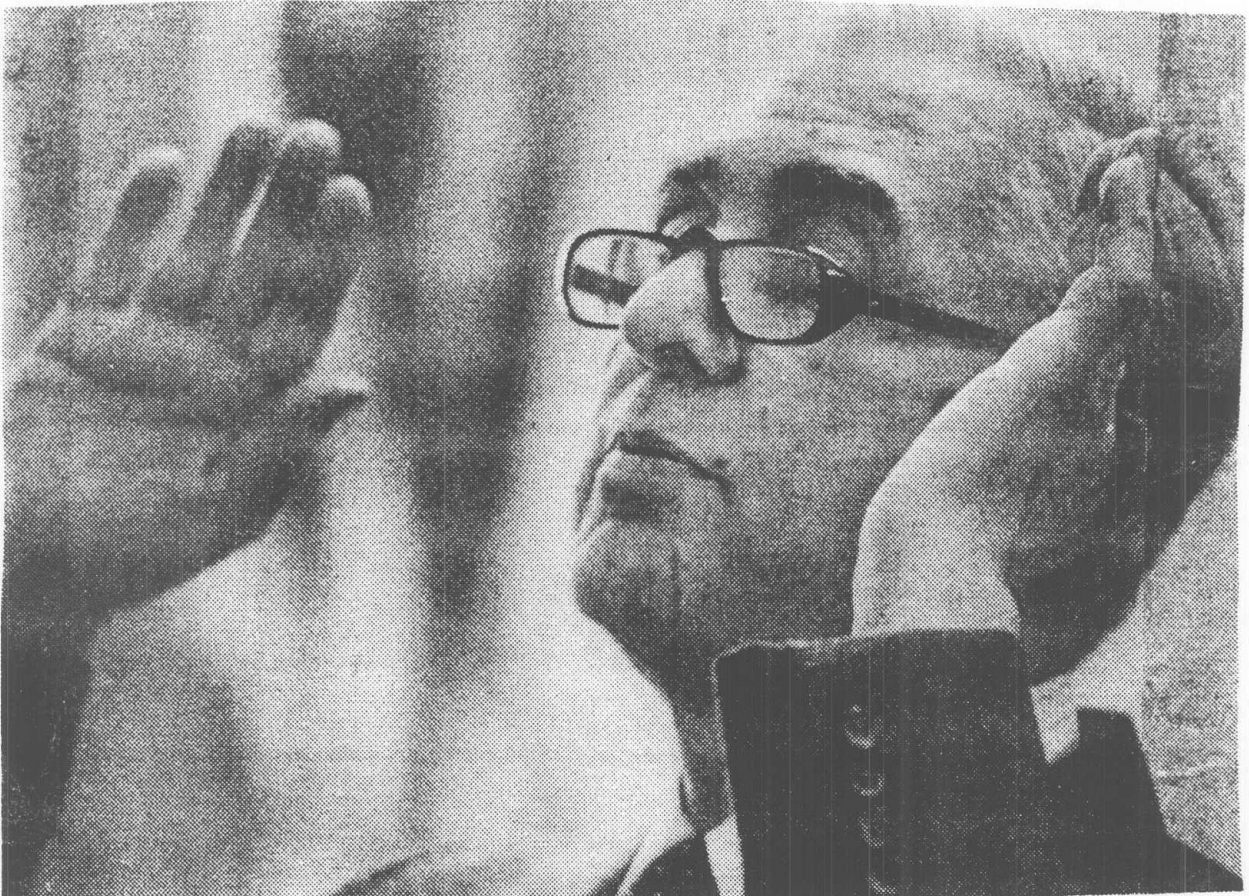
Loughrey attacked Rand's "Good Samaritan" defense, saying Rand had "ample" opportunities as he walked toward the center to call the girl's plight to other persons, but chose not to. The center did not have any Down's syndrome residents at that time, the assistant district attorney noted.

The prosecutor acknowledged that two of the 10 witnesses who said they saw Rand with the girl made their observation in an area removed from the route followed by the bloodhound. Loughrey suggested that the witnesses were correct in their observations, and that the bloodhound's scent may have been thrown off by contaminants in the air.

Loughrey maintained that Rand had taken "advantage" of the girl's loving, trusting nature, symptomatic of Down's syndrome, to have her accompany him.

In defending the actions of the searcher who found the girl's body, Loughrey said he had 40 years' experience as a camper and that as an experienced outdoorsman he had the ability of seeing things that others might just "walk over." One prosecution witness said the burial site had been inspected by searchers at least a dozen times at different periods without anyone becoming suspicious.

Prosecutor John Loughrey, speaking to the jury, sums up the case against Andre Rand.



Defense attorney Jerome V. Giovinazzo delivers his summation.

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