

With Rand, said his client "didn't want the judge to cut short the deliberations. He wanted the jury to make the decision at the proper time" — the two charges together. The forewoman disclosed to Felig that a partial verdict had been agreed upon after she sent a note informing him of an "im- pending recess" and requesting a recess for the night.

After the kidnap verdict was disclosed, Giovinazzo sought dismissal of the murder count.

He reminded the judge that the prosecution offered no evidence that connected Rand to the girl's death, including the medical examiner's report concluding that the cause of death was unknown. He said the prosecution had produced only an "obscure and merely probable connection" with respect to any acts by Rand that might be considered "a direct cause of death."

He pointed out that even if Rand were convicted of murder he could not receive consecutive sentences.

Loughrey, in requesting the judge to permit the jury to continue its deliberations, pointed out that the jury had been deliberating for only about 15 hours over a two-day period and that its impasse may only be temporary.

Felig said that if he permitted the jury to go on and it could not agree on a murder verdict the prosecution would ordinarily have to retry Rand on the charge, but he considered this an unlikely prospect.

The judge also said that if Rand were convicted of the murder charge and it was appealed with the kidnaping conviction he could not see how an appeals court would permit the murder charge to stand if the kidnaping conviction were reversed.

"You can't be guilty of kidnaping and not guilty of the murder charge," the judge reasoned.

Then, posing his own question, he asked the lawyers: "What is the practicality of continuing?"

The prosecution's case was based on circumstantial evidence. Nine of 10 witnesses identified Rand as he walked with the smiling girl, sometimes hand-in-hand, between 2 and 3 p.m. on July 9. The witnesses said they saw the two proceed from a block from the girl's home in Westerleigh and continue along a route that ended on the grounds of the developmental center, a short distance from Rand's campsite.

A bloodhound trained to trail human body agents was brought by police to trail the girl's

The dog, with two exceptions, corroborated the path charted by the witnesses.

From the notes sent to the judge, it was obvious that the jury had, early in its deliberations, resolved the question of the kidnaping, one of the counts in the indictment on which Rand was charged. It was equally clear that the jury was having difficulty with the murder charge.

This was illustrated by one note which the judge received at 5:10 p.m.: "Do we have to believe that the defendant actually committed the act of murder to find the defendant guilty of murder in the second degree?"

This apparently referred to the judge's instructions that the jury need only conclude that the girl died while being kidnaped to find him guilty of the murder charge. Consideration of whether the murder was intentional or unintentional or even accidental was not important, the judge said.

At one point, the jury forewoman, in her frustration, called on the judge for a further definition of "guilty beyond a reasonable doubt," adding, in parentheses, "in layman's language."

The judge responded: "I'll try to make it as clear as I can."

The jury, by its notes to the judge, showed its attentiveness to the testimony.

On one occasion, it asked for Mrs. Schweiger's testimony relative to the clothing Jennifer wore when she left to play outdoors while her mother fulfilled a promise to clean the family swimming pool so that Jennifer could use it later that afternoon.

The jury at the same time asked for the testimony of a police hair and fiber expert who testified he found pink and red cotton fibers along with other assorted fibers on Rand's clothing. However, the expert was unable to make any comparison since Jennifer was unclothed when buried.

Mrs. Schweiger, however, testified Jennifer was wearing a pink T-shirt with various pastel colors and a Sesame Street logo, along with white shorts.

At another time, the jury asked for the testimony of a mechanic at the center, believed to have been the last person to see the girl alive. The mechanic said he saw Rand and the girl walk in the direction of the campsite, with the defendant "trying to push or direct her." The mechanic said he was test driving a marked center patrol car on which the word "Police" was clearly visible.

The defense maintained that Rand had encountered the girl and decided to escort her back to the developmental center from which the defendant believed she may have wandered.

Loughrey, in his summation, observed that Rand, in his journey from Westerleigh to Willowbrook, had numerous opportunities to relieve himself of the responsibility of returning the girl to Willowbrook by calling her plight to the attention of others. But he made no such attempt.

Rand has a history of offenses against children. Authorities also regarded him, at one time, as a suspect in three unsolved missing child cases.

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An impressive Andre Rand, right, is escorted by a court officer.

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