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Darby test provokes mixed reaction

By Catherine Thorpe

In the three weeks since alleged rapist Reginald Darby agreed to take an AIDS test in exchange for a reduced sentence, members of groups at Columbia and in New York City have speculated on whether the exchange will set a precedent for rape cases to come.

Darby, a former Summit security guard, is charged with the Feb. 17 rape of a Columbia College first-year student. Darby allegedly entered the student's room on the seventh floor of McBain Hall at 3:55 a.m. and raped her while holding a serrated knife to her throat.

Darby turned himself in to the police Feb. 18 and was charged with first degree rape, assault, and attempted sodomy. On July 10, the *Manhattan Lawyer* reported that Darby will receive a minimum of four to twelve and a maximum of five to fifteen years in prison because he agreed to take an AIDS test.

The statutory maximum sentence for first degree rape is eight and a half to 25 years, according to

Manhattan Lawyer.

Darby is scheduled to be sentenced this Friday, August 3.

Members of the medical profession questioned the rationale behind offering a reduced sentence, as the victim can now be tested herself to determine whether or not she was infected with the HIV virus.

“I was really surprised,” said Associate Dean and Professor of the Columbia School of Public Health Zena Stein. “Who advised them?”

“If the question is, was the victim infected, then she should be tested,” Stein added. “If the man turns out to be positive it wouldn’t tell her [whether or not she was infected].”

While agreeing that the Columbia student would be able to find out whether or not she was infected

without Darby's test, Associate Professor of the School of Public Health Ronald Bayer said mandatory AIDS testing may be appropriate in selected incidents.

"The problem is the question of timeliness," Bayer said.

An HIV-positive test from a rapist who is immediately caught and convicted would signal the victim that she should also be tested, Bayer said.

Rape victims cannot immediately ascertain their own HIV status because tests are only accurate if 13 weeks or more have passed since exposure.

Because of the necessary delay period, Bayer said, the victim in any rape case delayed beyond 13 weeks can use her own AIDS test to discover whether or not she is HIV-positive.

Before those 13 weeks are over, however, the victim is left in "limbo," Bayer said, adding that forcing rape suspects to be tested would be treating them unfairly.

"The notion of counting the accused as if he or she were guilty is a problem," he said.

"I think it's a mistake to reduce the severity of a prosecution," Bayer said of the Darby case. "It sends the wrong message about the seriousness of rape."

Francoise Jacobsohn, president of the New York chapter of the National Organization for Women (NOW), also thought the seriousness of the crime was not reflected in the decision for reduced sentencing.

"I'm horrified," Jacobsohn said.

"He has done something which will affect

this girl and her family and her friends for the rest of their lives, whether they like it or not,” she added. “He should be made to pay for it.”

Jacobsohn said AIDS testing should not be a bargaining chip, but should be required of rape suspects.

“His testing for AIDS should be part of the investigation,” she said.

Temma Kaplan, director of the Barnard College Center for Research on Women, said she thought Darby’s victim made the right decision.

“I would do it in her situation, too,” Kaplan said.

Kaplan said mandatory testing for all rape suspects would be a violation of privacy rights.

“You have to protect the right of every individual’s . . . integrity of body,” Kaplan said. “Testing of any kind violates the boundary.”

Kaplan said that the mandatory testing debate, like those of euthanasia and abortion, focuses on whether or not the state has the right to control aspects of citizens’ bodies.

“It’s all about one thing: what constitutes a violation of one’s body?” she said. “The body is a fortress over which the state should have no power.”

“You don’t officiate an act of violence by committing another act of violence,” she added.

Doctor A. Punsalang, of the Division of retrovirology and Immunobiology for the New York City Department of Health, said he could not comment on the case.